TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 229

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
PETITIONERS,

vs.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND
EXIA LOGAN REESE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 1, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No.

IN THE MATTER OF ELIZABETH WRIGHT AND CHARLES C. WRIGHT, DEBTORS.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Petitioners,

vs.

GUSTA LOGAN, HARRIETT LOGAN SAWYER AND EXIA LOGAN REESE,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7368

IN THE MATTER OF ELIZABETH WRIGHT AND CHARLES C. WRIGHT, DEBTORS.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Appellants,

vs.

GUSTA LOGAN, HARRIETT LOGAN SAWYER AND EXIA LOGAN REESE,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

TRANSCRIPT OF RECORD FILED JUNE 20, 1940.
SUPPLEMENTAL TRANSCRIPT OF RECORD FILED SEPTEMBER 4, 1940.
PRINTED RECORD.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7368

IN THE MATTER OF ELIZABETH WRIGHT AND CHARLES C. WRIGHT, DEBTORS.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Appellants,

vs.

GUSTA LOGAN, HARRIETT LOGAN SAWYER AND EXIA LOGAN REESE,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois, ... Division.

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1 Pleas in the District Court of the United States Placi
within and for the Eastern District of Illinois, at a regular term thereof, begun and held in the United States Court Room, in the City of Danville, in said District, before the Honorable Walter C. Lindley, Judge of said Court, on the first Monday of March, in the year of our Lord One Thousand Nine Hundred and Forty and of the independence of the United States of America, the one hundred and sixty-fourth year.

D. H. Reed,
Clerk.

In the Matter of
Elizabeth Wright and Charles C. Wright,
Debtors.
In Bankruptcy
No. 2414-D.

1 ENTRIES ON BANKRUPTCY DOCKET.

5-3-34. File Debtor's Petition & Schedules, 10:30 A. M.

5-3-34. Issue Order of Reference to Referee with instructions to proceed in conformity with Bankruptcy Act as amended without adjudication, under Section 74.

5-3-34. Enter Restraining Order.

8-18-34. File Certificate of Review.

8-22-34. Enter Hearing on Cert. of Review of Referee's Report—Taken under advisement to be decided by 8-30-34.

8-30-34. Enter Order Approving & Confirming Rept. of Referee—Exception allowed all petitioners who move in Arrest of Judgment—Motion in Arrest of Judgment denied—Exception allowed—Petitioners allowed 60 days to file Cert. of Evidence or Pet. for Appeal & Assignment of Errors—Bond fixed at $250.00—Enter Order allowing Petitioners leave to use Original Transcript in this case.

Sept. 13. File Petition for Appeal duly approved (pd) $5.00.

Sept. 13. File Appeal Bond for Costs duly approved 9-30-34 Rep. $5.00.

Sept. 13. File Assignment of Errors.

Sept. 20. File Praecipe for Record on Appeal.

Oct. 23. File Citation duly served.

Oct. 26. Mail to U. S. C. C. of Appeals, Transcript of Record—Cost $3.00 3.00.

3-29-35. File Mandate Affirming Order or Decree of District Court 12-21-34 Rep. 3.00.

4-5-35. File Petition asking Leave to File under Sec. 75.

4-5-35. Enter Order Setting Aside Order of Reference to Referee & Order to file Amended Petition.

4-5-35. File Petitions & Schedules under Sec. 75.

4-5-35. Issue Order of Reference to Conciliation Commissioner.

4-27-35. File Referee's Complete Record.

4-27-35. File Referee's Final Report—File Order Approving Referee's Final Report.

5-17-35. File Report of Conciliation Commissioner asking for hearing.

6-3-35. Hearing set for Tues. June 11, 1935.

6-11-35. Enter heading—On Motion of Dismissal of Proceedings by McLain, Paris, Atty. for Logan—Order dissolving injunction allowed—Appeal allowed—Exception allowed (Bond fixed at $200.00).

7-31-35. File Receipt of F. C. Van Seller, Attorney for William S. Logan, Appellee, sum of $20.00—Dated July 12, 1935.

Sept. 28-35. File Report of S. I. Headley, Conciliation Commissioner & Complete Record.

9-30-35. Enter 10 day show cause Order to Amend or be Dismissed.

9-30-35. This Order suggested by Chief Deputy, V. D. Rodgers.

Oct. 9-35. File Debtor's Amended Petition.

Oct. 14-35. Enter Order Reinstating Cause under Section 75 & for Reference to C. C. to consider Composition or Extension Agreement—Copy to C. C. & Debtor.

Oct. 14-35. Issue Order of Reference to Harvey Gross, C. C.

Oct. 15-35. Mailed C. C. Filed to Harvey Gross, C. C.

Nov. 9-35. File Petition of Debtor for Reference to New Conciliation Commissioner.

Nov. 9-35. Enter Order allowing above Petition & Cause referred to James A. Solon, C. C. of Champaign County.

Nov. 12-35. Complete Conciliation Commissioner File Received from Harvey Gross.

2 1935

Nov. 12. Issue Order of Reference to James A. Solon, Champaign County, Conciliation Commissioner by Order of Court—Filed Mailed.

Nov. 12. File Harvey Gross Report as Conciliation Commissioner.

1936

Feb. 29. File Petition of Debtor for Restraining Order & Notice of Hearing to be had Saturday, March 7th before Judge Lindley at 9 A. M.

1939

Jan. 4. File Petition of W. S. Logan Heirs to surrender possession of premises described therein & Conciliation Commissioner, James Solon, to make Report.

1-4-39. Enter Rule upon Defendants to Answer within 10 days to above petition—Notices mailed.

1-14-39. File Debtor's Motion to Dismiss the petition of Jan. 4, 39, filed by W. S. Logan Heirs to surrender possession of real estate.

1-14-39. Court Orders Briefs to be filed in accordance with local Ruling—Attorneys notified and copy of Ruling.

1-17-39. File Brief of Authorities in support of Motion to Dismiss Petition by Debtor.

1-21-39. File Brief of Authorities in Reply to Brief filed herein by attorneys for Debtor in support of their motion to Dismiss petition of Gusta Logan, Harriet Logan Sawyer & Exia Logan Reese—copy mailed to Walter Dysert, Atty.

1-26-39. Enter Order of Court extending Time two (2) weeks (Feb. 17th) in which Debtor may file Reply Briefs.

2-17-39. Enter Order upon Motion to Dismiss Petition of Gusta Logan, et al. for Relief in the alternative—same Denied—Thereupon, upon motion of either party or the Court, this cause will be set for hearing that Court may determine what equity should be done.

2-17-39. Mailed copies to Walter Dysert—E. Wright—Jones, Grant & Sebat & James Solon.

2-27-39. File Debtor's Answer to above Decision of Court & Petition of Mortgagees—Mailed copy to Jones, Grant & Sebat, Attys. for Mortgagor.

3-9-39. Hearing—Appearances: Walter Dysert and H. J. Hasch, Attys. for Debtor. Paul Jones, Atty. for Gusta Logan, et al. Enter hearing to determine equity to be done—Statements of respective counsel—Evidence by petitioners—oral and documentary evidence by debtor—Court directs counsel to submit to the Court any agreed statement as to amount due at this time including deficiency judgment—Cause taken under advisement.

3-11-39. File Stipulation signed by Elizabeth & Charles C. Wright and Augusta Logan—Harriet Logan Sawyer & Exia Logan Reese, showing indebtedness of $5,169.50 plus Master in Chancery deficiency of $300.00 and interest thereon from 2-3-33 to date of $91.22.

March 11. Enter Order upon Petition of W. S. Logan, et al. land worth $5000.00 total indebtedness, $5560.72. Accordingly jurisdiction over deed held by petitioners is retained by Court; debtors to remain in possession & custody of property upon condition they pay reasonable rental for use of land during 1938 farming season at once—This

matter continued for 120 days from this date that debtor shall have opportunity to redeem from mortgage sale & to make any & all possible adjustment & composition with their creditors. In absence of their inability to complete same within 120 days, the Court will at end of that time, give full force and effect to the deed held by petitioners. The Conciliation Commissioner will act in accord with this order & copy mailed to Con. Com. James Solon, Champaign, Ill. to Walter Dysert and to Jones, Grant & Sebat & to Debtor.

5-15-39. Enter Order of Court granting Leave to Elizabeth Wright, Debtor to withdraw copy of Transcript of Record #5378 dated Nov. 8th, 1934 in U. S. Circuit Court of Appeals as heretofore offered as evidence.

7-11-39. Enter Order extending time for a period of 30 days from this date—upon Motion of Walter Dysert.

8-11-39. Enter Order of Court extending time for a period of Sixty (60) days from this date for debtor to redeem from mortgage sale & make all possible adjustments & composition.

Jan. 6-40. Entered Order of Court—Extension & Continuance came to an end about 6 months ago & upon Motion of Creditors, Petition of Gusta Logan, et al., as filed 1-4-39 for debtor to surrender premises is ordered set for final hearing, Jan. 12, 1940 at 9:30 A. M. Conciliator ordered to make & file Current Report to date—copies mailed by Miss Jones.

Jan. 12-40. File Report of Con. Commissioner, James Solon and asking for an additional period of time to accomplish the plan and reporting $450.00 on hand.

Jan. 12-40. Enter Hearing upon Petition of Gusta Logan & Answer—Statements of Counsel—Evidence heard—Enter Order of Continuance to Mar. 1, 1940 etc. to give possession of premises or to pay to Clerk for distribution among petitioners, $5560.72, plus interest at 5% from 3-11-39 to date of payment as Drawn.

Mch. 2-40. Case set for hearing, Monday Mch. 4th at 10 A. M.

Mch. 2-40. File Amended Debtor's Petition in proceedings under Sec. 75 Sub. Sec. S.

Mch. 4-40. Hearing before Court in matter of possession by Mortgagor and allowing Debtor to amend Petition for Adjudication under 75 S—Appearances: Walter V. Dysert for Debtor & Paul Jones for Mortgagee—Evidence heard and matter taken under advisement.

Mch. 5. Enter Memo under Debtor's Amended Petition —Amended petition tendered 3-2-40, hereby denied—any and all prohibition upon intervening petitioners from exercising their rights under deed heretofore obtained by them, be & same hereby removed; Deed heretofore issued by Master in Chancery be given full force & effect & that possession of premises described in original petition be surrendered immediately to said intervening petitioners, Gusta Logan, Harriet Logan Sawyer & Exia Logan Reese by Debtors as provided in Jan. 12, 1940 order. It is further ordered that Debtor proceedings herein are hereby dismissed.

3-5-40. Mailed copies of Memo to Walter Dysert—Paul Jones, James A. Solon Debtor, Elizabeth Wright and to Attorney General.

3-27-40. File Notice & Petition for Appeal. $5.00.

3-27-40. File Assignment of Errors. Reported 3-31-40. 5.00.

3-27-40. File Cost Bond ($250.00) duly approved.

3-27-40. File Praecipe for Record on Appeal.

3 1940

3-27-40. File Certificate of Clerk of Mailing Notice .50c.

3-28-40. File Notice and Receipt by John Sebat of Notice & Petition for Appeal and Designation, etc.

4-27-40. Enter Order Extending Time to Prepare & file Record on Appeal to U. S. C. C. A. to June 20, 1940 with consent of attys. for appellees.

6-14-30. Appeal Record 96 folios @ 5c $4.80 20 folios @ 45c—$9.00 and Cert. 50c Total $14.30.

7-1-40. File Supplemental Designation of Contents of Record on Appeal.

7-1-40. File Proof of Service of Supplemental Designation of Contents of Record. Report 6-30-40 14.30.

4 ORDER OF APPROVAL AND RESTRAINING ORDER.

Entered May 3, 1934.

Entered May 3, 1934.

Upon presentation to me of the joint petition of Elizabeth Wright and Charles C. Wright, for an extension of time within which to pay their debts, and upon examination of the petition and the schedules filed in support of the same, I find they sufficiently conform to all the legal requirements to the amendment to the Bankruptcy Act, and are filed in good faith, and I hereby approve the same, and each and all of the creditors, their agents, attorneys, and all persons acting by, through, under, or on their behalf, are hereby restrained and enjoined from taking any further steps or proceedings of any kind or character whatsoever toward enforcing any obligations against said debtors, until the further order of the Court.

Dated this 3rd day of May, A. D. 1934.

Walter C. Lindley,
Judge.

5 ORDER GRANTING LEAVE TO FILE PETITION UNDER SECTION 75 AND ORDER OF APPROVAL.

Entered Apr. 5, 1935.

Entered April 5, 1935.

Upon presentation and consideration of the duly verified petition of Elizabeth Wright and Charles C. Wright, petitioning debtors in the above entitled cause, which is on file in the office of the clerk of this court, to set aside the order of reference heretofore made in the above entitled cause with permission to these petitioning debtors to file amended petition and schedules under Section 75 of the Bankruptcy Act instead of under Section 74 of said act, and to refer same when filed to the Conciliation Commissioner.

It Is Hereby Ordered that the order of reference of said cause to Walter J. Grant as Referee in Bankruptcy of this court, be, and the same is hereby set aside, and I find that the amended petitions and schedules filed by said petitioning debtors under Section 75 of the Bankruptcy Act, praying that they be afforded an opportunity to effect a compo-

sition or an extension of time to pay their debts, in accordance with the provision of said act, are in proper form and filed in good faith, and said petitions and schedules are properly filed under said Section.

(Signed) Fred L. Wham,
Judge of the District Court of the United States, for the Eastern District of Illinois.

Filed Apr. 5, 1935. 6

DEBTOR'S PETITION

In Proceedings Under Section 75 of the Bankruptcy Act.

Filed—April 5, 1935.

To the Honorable Walter C. Lindley, Judge of United States District Court for the Eastern District of Illinois.

The Petition of (Full Name—No Initials) Elizabeth Wright and Charles C. Wright of Paris, in the County of Edgar and District and State of Illinois (Occupation, Trade, or Business of) Farmers.

Respectfully Represents: That they are personally bona-fide engaged primarily in farming operations (or that the principal part of their income is derived from farming operations) as follows: They actually operate and personally conduct a grain, stock and dairy farm, in Edgar County, Illinois, and actually reside on the same as their homestead; that such farming operations occur in the county (or counties) of Edgar, within said judicial district; that they are insolvent (or unable to meet their debts as they mature); and that they desire to affect a composition or extension of time pay their debts under section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all their debts, and (so far as it is possible to ascertain) the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains an accurate inventory of all their property, both real and personal, and

such further statements concerning said property as are required by the provisions of said act.

Wherefore Your Petitioner Prays, That this petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

Elizabeth Wright,
Charles C. Wright,
Petitioner.

Graham & Dysert,
908 1st Natl. Bank Bldg.,
Danville, Illinois,
Attorney for Petitioner.
(Business Address)

Duly Verified.

7 Schedule A-1

Statement of all Creditors who are to be paid in Full, or to Whom Priority is Secured by Law.

	Amount $ Cts.
1—Taxes and debts due and owing to the United States:	
None.	
2—Taxes due and owing to the State of Illinois or to any county, district of municipality thereof:	
R. Est. Taxes due, 1933, Edgar County, Ills...	122.46
R. Est. Taxes due, 1934, Edgar County, Ills...	59.27
R. Est. Taxes due, 1935, Edgar County, Ills...	70.15
Total,	251.88

8 Schedule A-2.

Creditors Holding Securities.

			Amount of Debts $ Cts.
William S. Logan, Paris, Illinois.—Owner and holder of a Certificate of Sale on his mortgage foreclosure, on E½ SE¼ SE¼ Sec. 20, and N½ SW¼ SW¼ Sec. 21, Twp. 14 N. R. 12 West, containing 40 acres, in Paris Township, Edgar County, Illinois. On which debtors owe the following:			
Mortgage	$3100.00		
Mortgage Int. Coupon	153.50		
C. C. Wright Note	214.46		
Lumber Account	18.91		
Taxes, 1932	42.90		
	$3,529.77		
		$3,529.77	
Less following credits:			
Cash rent for 1933 paid W. S. Logan	57.00		
Cash rent for 1933 paid W. S. Logan	93.00		
Check of Everett Andrews	150.00		
	$300.00		
		$ 300.00	
Balance due, plus interest		$3,229.77	3,229.77

R. E. Ragains, Paris, Illinois.—Judgment in Circuit Court, Paris, Illinois, dated May 23, 1927. Amount due $1,764.00, less Credits $280.93.....	1,483.07
Alan J. Parrish, Paris, Illinois.—Judgment in Circuit Court, Paris, Illinois, dated June 21, 1932. Amount due $785.40, less credits $3.60.....	781.80
Walter Hoenig, doing business as Jones Dry Goods Co., Paris, Illinois.—Judgment in Circuit Court, Paris, Illinois, dated June 21, 1932. Amount due $663.96, less credits $171.00.....	492.96
Helen L. Wright, Paris, Illinois.—Chattel Mortgage on Personal Property.....	400.00
William C. Wilson, Robinson, Illinois, deficiency on Foreclosure sale approved Nov. 12, 1929, on Certificate of Sale on his Foreclosure, on all that part of the W½ NE¼ of Sec. 32, Twp. 13 N. R. 11 West, being 40 acres more or less.....	1,128.50
William S. Logan, Paris, Illinois, deficiency stated on the William S. Logan foreclosure.....	300.00
Total,	$7,816.10

9 **Schedule B-1.**

Real Estate.

	Estimated Value $ Cts.
1. The E½ SE¼ SE¼ of Section 20, Township 14 North, Range 12, West of the 2nd P. M., containing 20 acres more or less, in Paris Township, Edgar County, Illinois	5,000.00
2. The N½ SW¼ NW¼ of Section 21, Township 14 North, Range 12 West of the 2nd P. M., containing 20 acres more or less, in Paris Township, Edgar County, Illinois	1,000.00
(Tracts 1 and 2 being subject to Certificate of Sale in favor of William S. Logan, on his mortgage foreclosure on said premises, on which the debtors owe a balance of $3,229.77.)	
3. A right of way 18 feet wide across a strip of land lying along the West side of the W½ SW¼ NW¼ of said Sec. 21; said strip of land being the West 18 feet of land given to Everett Andrews by last will and testament of Francis M. Andrews, deceased	50.00
4. An estate for life in Elizabeth Wright, petitioner, in the E½ SE¼ of Sec. 20, Township 14 North, Range 12 West of the 2nd P. M. Also, the South 10 acres of the SE¼ NE¼ of Sec. 20, Township 14 North, Range 12 West, except Tract 1 of 20 acres above described, being approximately 70 acres more or less, in Paris Township, Edgar County, Illinois	600.00
Total,	6,650.00

10 Schedule B-2.

Personal Property.

	$ Cts.
A. Cash on hand: None.	
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.: 1 car robe, 1 pr. quilting frames; 3 mattresses; 3 bed springs; 2 pr. crutches; 1 storage trunk; 1 storage box; 1 fern stand and plant; 4 house plants; 2 stools; 2 bedroom rockers; 2 stand tables; 3 strips carpet; 1 lot curtain fixtures; 1 lot table linen and towels; 1 lot sheets and pillow slips; 1 walnut bedroom suite; 1 lot paint; 1 carpet sweeper and brush; 1 conservo; 1 lot building tile; 1 pump and pump jack; 1 lot baskets; 1 refrigerator; 1 kitchen cabinet; 1 kitchen table; 2 kitchen chairs; 1 dining table; 6 dining chairs; 3 iron beds; 1 office desk; 3 rockers; 2 dressers; 2 heating stoves; 1 lot curtains; 1 lot blinds; 2 large rugs; 1 small rug; 1 sewing machine; 1 lot bedding; 1 lot dishes; 1 trunk; 1 porch swing; 1 porch rocker; 1 day bed; 1 bookcase; 1 lot silverware; 1 linoleum; 1 watch; 1 ring; 1 brooch; 200 vols. school books; 12 pictures; 1 suitcase; 1 bag; 1 lantern; 1 Coleman lamp; screen doors and windows; 1 lot wearing apparel	194.00
F. Horses, cows, sheep and other animals, (with number of each) viz.: 15 cows; 1 horse; 2 mules; 6 sows; 9 pigs; 38 shoats; 3 heifers; 2 calves	1,729.00
G. Carriages and other vehicles, viz.: 1 Willys 1931 ½ Ton Commercial Truck.....	200.00

H. Farming stock and implements of husbandry, viz.:

1 International Tractor and Disc; 1 John Deere Plow; 1 Weber Wagon, 1 Schuttler Wagon, 1 Birdsell Wagon; 2 Wagons; 2 Tower Surf. Cultivators; 2 Shovel Cultivators; 1 John Deere Corn Planter; 120 rods wire; 2 Water Tanks; 1 Tank Heater; 1 Mower; 1 Corn Sheller; 1 Harrow; 1 Rotary Hoe; 1 International Hay Baler; 1 Oats Seeder; 1 Manure Spreader; 1 Steam Boiler and pipes; 1 Bottle Washer, double tub; 1 Steam Turbine; 1 Milk Cooler; 12 Milk Crates; 500 milk Bottles; 4 milk buckets; 1 Row Wheat Drill; 1½H. Engine; 2 Hog Houses; 2 Ladders; 1 lot jars; 1 Churn; 1 Brooder Stove; 1 lot milk bottle Caps; 1 Tractor Gang Plow; 8 Sets Harness; 1 lot Posts; 2 Hog Troughs; 1 Garden low; 1 Walking Plow; 1 Sulkey Plow; 40 old Chickens; 6 Oil Drums; 1 lot wood; 1 lot lumber; 3 scoop end gates; 1 lime spreader; 35 acres plowed ground; 1 ton coal; 1 lot cobs; ½ of 20 acres growing wheat; 100 bushels oats; 10 acres Alfalfa; 300 bushels Corn; 8 Tons Hay; 5 gals. Acquedam 1,149.00

Total, 3,272.00

11 **Schedule B-3.**

Choses in Action.

	$ Cts.
A. Debts due petitioner on open account:	
Mrs. Mary Lauher, Paris, Ills.	5.70
Ralph Reynolds, Paris, Ills.	5.70
Mrs. Larsen, Paris, Ills.	2.00
Ralph Davis, Paris, Ills.	28.00
Harry Wright, Paris, Ills.	5.75
Carl Vidito, Paris, Ills.	9.95
Marion Link, Paris, Ills.	35.30
Elwood Phillips, Paris, Ills.	7.90
Mr. McEvoy, Unknown	12.00
Wm. Chaney, Paris, Ills.	3.50
George Misbach, Paris, Ills.	7.50
Claude Davidson, Paris, Ills.	3.00
Joe Stephens, Paris, Ills.	41.46
Wm. Dowling, Paris, Ills.	5.00
Bob Griffin, Paris, Ills.	32.00
Robert Chalimese, Paris, Ills.	33.90
Mrs. Kesmodel, Paris, Ills.	7.50
A. E. Anderson, Paris, Ills.	30.00
Edgar Weaver, Paris, Ills., To be paid by labor on Bldgs.	50.68
Dr. Collier, Atwood, Ills.	40.00
Wm. McEvoy, Paris, Ills., To be paid by painting Bldgs.	27.38
Clarence Sweitzer, Paris, Ills., Rent	75.00
John Griffin, Paris, Ills.	38.88
Harry Smith, Paris, Ill.	15.38
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds:	
Insurance Rebates paid to W. S. Logan or Jasper Humerickhouse, Receiver, $64.81 and $10.00	74.81
Edgar Weaver, Carpenter work done on buildings and paid by Wrights.—Previously O.K.'d by W. S. Logan	40.85
Wm. McEvoy, Painting building,—paid by Wrights,—Previously O.K.'d by W. S. Logan	57.60
Total,	**696.94**

12 **Schedule B-5.**

	Valuation $ Cts.
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and references given to the statute of the State creating the exemption. (See State Law):	
The petitioner, Charles Wright, states that he is the head of a family, consisting of Elizabeth Wright, wife, Helen Wright, daughter, and Alden, Crawford and Robert Wright, sons, and resides with the same in the Town of Paris, Edgar County and State of Illinois, and that the following personal property is hereby claimed to be exempt under and by virtue of an act of the General Assembly of the State of Illinois, entitled, "An Act to exempt personal property from attachment and sale on execution, and from distress for rent", approved May 24, 1877, in force July 1, 1877, and all amendments thereto:	
Household Goods and Farming Equipment, and Live Stock, subject to Chattel Mortgage	400.00
The following Real Estate is also claimed to be exempt under and by virtue of an act of the General Assembly of the State of Illinois, entitled: "An Act to amend an Act, entitled, 'An Act to exempt the Homestead from forced sale, and to provide for setting off the same, etc.,' " approved April 30, 1873, in force July 1, 1873, and amendments thereto. Used as a residence of petitioners and family.	
The E½ of the SE¼ of the SE¼ of Section 20, Township 14 North, Range 12 West of the 2nd P. M., containing 20 acres more or less, in Paris Township, Edgar County, Illinois	1,000.00
Total,	**1,400.00**

13 **Summary of Debts and Assets.**
(From the Statement of the Bankrupt in Schedules A and B.)

Schedule A—1 (2) Taxes due States, Counties, Districts and Municipalities	251.88
Schedule A—2 Secured Claims	7,816.10
Schedule A—3 Unsecured Claims	1,693.67
Schedule A. Total	9,761.65
Schedule B—1 Real Estate	6,650.00
Schedule B—2-d Household Goods, etc.	194.00
Schedule B—2-f Horses, Cows and other Animals.	1,729.00
Schedule B—2-g Carriages and other Vehicles	200.00
Schedule B—2-h Farming Stock and Implements	1,149.00
Schedule B—3-a Debts due on Open Accounts	696.94
Schedule B—5 Property claimed to be exempted: $1,400.00	
Schedule B, Total	10,618.94

14 **ORDER DISSOLVING INJUNCTION.**

Entered June 11, 1935.

Entered June 11, 1935.

Present: Honorable Walter C. Lindley, Judge.

Now on this 11th day of June, A. D. 1935, comes on for hearing Motion for a Dismissal of Proceedings, and the Court after hearing the evidence herein and being fully advised in the premises, Orders that said Injunction heretofore entered herein be, and the same is hereby Dissolved, to which ruling of the Court an exception is allowed. Debtor given Thirty Days in which to appeal, upon filing bond for costs in the sum of Two Hundred ($200.00) Dollars.

Filed Sept. 28, 1935. 15 CONCILIATION COMMISSIONER'S REPORT.

Filed September 28, 1935.

Comes now, S. I. Headley, Conciliation Commissioner of Edgar County, Illinois and reports:

1. That petition was duly filed, notices mailed to all listed creditors and publication duly made in the Paris Daily Beacon News, more than ten days prior to date of First Creditor's Meeting.

2. Meeting held May 16 at 2 O'clock in the afternoon as advertised and nine Proofs of Claim were filed, which is less than half of those listed.

3. Petitioners were present with their attorney and Frank C. VanSellar was present, representing creditor, W. S. Logan as well as three other smaller creditors. One other creditor was present in person.

4. A motion in writing was presented by Attorney Van Sellar for W. S. Logan, Creditor, asking that said proceeding be dismissed. Said motion is herewith referred to the U. S. District Court for consideration and instruction.

5. Case recessed to to May 23, 1935 awaiting instructions in regard to motion of W. S. Logan and to give additional time for filing and proving of claims.

Respectfully submitted,
S. I. Headley,
Conciliation Commissioner.

Dated at Paris, Illinois,
May 16, 1935.

Filed Sept. 28, 1935. 16 COMMISSIONER'S FINAL REPORT.

Filed September 28, 1935.

Supplementing Report of April 16, 1935—no agreement reached by debtors and creditors. Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor.

We are herewith returning papers to you as I am advised there is a new conciliation commissioner for this county. Mrs. Wright claims she was not proceeding under the Frazier-Lemke Act and therefore was not affected

by its defeat as unconstitutional. I am closing this from my docket and returning to you all schedules and claims filed.

Respectfully submitted,
(Signed) S. I. Headley,
Conciliation Commissioner.

17 ORDER OF THE COURT UPON REPORT OF CONCILIATION COMMISSIONER. CONSENT TO AMEND PETITION UNDER SECTION 75—ORDER TO SHOW CAUSE. Entered Sept. 30, 1935.

Filed September 30, 1935.

Upon the filing of the Report of the Conciliation Commissioner,

It Is Ordered By The Court that Elizabeth Wright and Charles C. Wright, Debtors herein have leave to amend their petition filed herein, to include a prayer for adjudication under the new sub-section "S" of Section 75 of the Bankruptcy Act as amended within Ten Days of this date; that in the absence of such amendment, the said debtor Show Cause herein on or before said date why the original petition herein should not be dismissed at the cost of the petitioner.

Entered this 30th day of September, A. D. 1935.
(Signed) Walter C. Lindley,
Judge, U. S. District Court.

18 AMENDED DEBTORS PETITION. Filed Oct. 9, 1935.

Filed October 9, 1935.

To the Honorable Walter C. Lindley, Judge of the United States District Court for the Eastern District of Illinois:

The above named debtors respectfully show unto your Honor, that on or about the 3d day of May, 1934, they filed in this court their petition under Section 74 of the Bankruptcy Act, and later, on the 5th day of April, 1935, by leave of court first had and obtained, transferred their proceedings from said Section 14 to Section 75 of the

Bankruptcy Act, and thereupon an order of reference was made of said cause to the Conciliation Commissioner, Stephen I. Headley, at Paris, Edgar County, Illinois; that certain creditors of your debtors presented their claims for filing before said Commissioner, but the claims of such creditors were never allowed and no time was fixed for filing objections to such claims as were presented for filing, and consequently no duly qualified first meeting of creditors was held to completion and no creditors voted at said meeting, and said meeting was adjourned, and at the adjourned meeting no claims were allowed and no opportunity was given for objections to the claims that had been presented for filing, and no creditors were qualified at said meeting to vote on any proposition and no vote was taken at said meeting, and it was adjourned, and there never has been any meeting of the debtors creditors before said commissioner to obtain the acceptance of the majority in number and amount of all creditors whose claims were affected by any composition or extension
19 proposal, and said proceeding has not yet reached that stage where any proposal has been submitted.

Your petitioners further show that William S. Logan was and is one of their secured creditors and when the original petition under Section 74, and the transfer to Section 75, were filed, he held a certificate of sale issued by the Master in Chancery of Edgar County in a decree of foreclosure, which certificate was dated February 3, 1933, but since said transfer of said cause was filed said creditor has procured and recorded a deed from said Master on said Certificate of Sale to the Forty (40) acres of land owned and scheduled by the debtors.

That before and after the twelve months period of redemption provided by Illinois Statute to debtors from foreclosure, mortgage sales expired, said creditor at different times and places, at his office in Paris, Illinois, and elsewhere, verbally agreed with your petitioners that they could redeem said farm any time they could get the money to pay him what they owed him; that they could redeem the property from him either before or after the twelve months period of redemption expired after said sale and even after that time he would deed said property to their daughter or anyone else they suggested; that in case of his death before all this was accomplished he would instruct his son Ben, and his secretary, that the land was

to be deeded back to petitioners even though the fifteen months allowed creditors to redeem had expired; that they would have no trouble in redeeming the farm whenever they paid him the money and that his word was as good as his bond, and while a witness on cross-examination before Referee in Bankruptcy in a former proceeding, he volunteered the substance of the above statements, and then, thereafter, refused to accept what money was owing him, and refused to sign the papers necessary to enable petitioners to get money from the Federal Lank Bank at St. Louis, Missouri, which bank he knew had signed a commitment of more than enough to pay him, and that by virtue of said agreement a contractual relation was thereby created between said secured creditor and these petitioners and their right of redemption from said foreclosure sale and to a deed from said creditor on payment of the amount due him still remains in them and they have never been deprived of their right to said deed or to their right of redemption by virtue of said decree of foreclosure, the Master's sale, his certificate of sale, or the Master's deed issued thereon.

Your petitioners hereby amend all of the formed petitions heretofore filed by them in said cause and to hereby substitute for the provisions of said petition as may be in conflict with this amendment, the contends of the present Bankruptcy Act as amended, under which they pray for all relief and rights afforded them under any and all of the Bankruptcy Laws of the United States now or heretofore in force, and they pray that the court will give full force and effect to the verbal agreement of said secured creditor, William S. Logan, and that this court will grant to your petitioners all of the relief to which said verbal agreement and laws entitled them to; that all proceedings may be had in regard to them and their property in conformity with said Bankruptcy Act as amended; that they have a right to avail themselves of a composition with their creditors or an extension of time.

Elizabeth Wright,
Charles C. Wright,
Petitioners.

Entered Oct. 14, 1935. 21 ORDER OF APPROVAL.

Entered October 14th, 1935.

Upon presentation and consideration of the duly verified petition of Elizabeth Wright and Charles C. Wright, petitioning debtors in the above entitled cause, which is on file in the office of the clerk of this court, to set aside the order of reference heretofore made in the above entitled cause with permission to these petitioning debtors to file amended petition and schedules under Section 75 of the Bankruptcy Act in stead of under Section 74 of said act, and to refer same when filed to the Conciliation Commissioner.

It Is Hereby Ordered that the Order of Reference of said cause to Walter J. Grant as Referee in Bankruptcy of this court, be and the same is hereby set aside, and I find that the Amended Petitions and Schedules filed by said petitioning debtors under Section 75 of the Bankruptcy Act, praying that they be afforded an opportunity to effect a composition or an extension of time to pay their debts, in accordance with the provision of said act, are in proper form and filed in good faith, and said petitions and schedules are properly filed under said Section.

(Signed) Fred L. Wham,
Judge of the District Court of the United States, for the Eastern District of Illinois.

Entered Oct. 14, 1935. 22 ORDER REINSTATING CAUSE UNDER SECTION 75 AND FOR REFERENCE TO CONCILIATION COMMISSIONER TO CONSIDER COMPOSITION OR EXTENSION AGREEMENT.

Entered October 14, 1935.

Now on this 14th day of October, A. D. 1935, upon motion of Elizabeth Wright and Charles C. Wright, debtors herein, it appearing to the court that said debtors have heretofore filed herein their petition under Section 75 of the Bankruptcy Law as Amended. And it further appearing to the Court said debtors have not had sufficient opportunity to submit to their creditors a proposal

of composition or extension, as provided under said Section 75, and that said cause should be reinstated and said debtors be given leave to avail themselves of a composition or extension agreement with their creditors, if such can be obtained:

Now, therefore, It Is Hereby Ordered By The Court, that this cause be and the same is hereby reinstated, and that said proceeding be referred to the duly qualified conciliation Commissioner of Edgar County, for such proceedings as provided under subsection (g) of Section 75 as amended.

(Signed) Fred L. Wham,
Judge, U. S. District Court.

23 ORDER OF RE-REFERENCE.

Entered Oct. 14, 1935.

Entered October 14, 1935.

Whereas the petition of Elizabeth Wright and Charles C. Wright, filed in this Court on the 5th day of April, A. D. 1935, praying that he be afforded an opportunity to effect a composition or extension of time to pay his debts under section 75 of the Bankruptcy Act, having been duly approved by order of this Court on the 5th day of April, A. D. 1935, and their Amended Petition filed on Oct. 9th, 1935, it is thereupon, ordered, that said matter be re-referred to Harvey Gross of Paris, Edgar County, one of the conciliation commissioners of this Court, to take such further proceedings therein as are required by said section, and if application for confirmation of proposal for composition or extension under said section 75 be duly filed with the conciliation commissioner, to hold, after due notice to creditors, a final creditors' meeting to consider said application for confirmation and to report his findings and conclusions relating to the confirmation or denial of such application to this Court, accompanied by all those papers, instruments, accounts and recommendations specified in Section 6 of General Order L. as promulgated by the Supreme Court of the United States; and that said Elizabeth Wright and Charles C. Wright, debtor, shall attend before said conciliation commissioner, instanter, and shall henceforth submit to such orders as may be made by said conciliation commissioner or by this

Court relating to the proceedings under said section; and shall make and file with the conciliation commissioner a full and complete inventory of all his property within ten days from the date of this order.

Witness the Honorable Fred L. Wham, Judge of said Court, and the seal thereof at Danville, Illinois, in said District on the 14th day of October, A. D. 1935.

D. H. Reed,
(Seal) *Clerk.*

Endorsed: In the District Court of the United States * * (Caption—2414-D) * * Order of Reference to Conciliation Commissioner Issued October 14th, 1935 Douglas H. Reed, Clerk.

Filed Nov. 9, 1935.

24 PETITION FOR REFERENCE TO NEW CONCILIATION COMMISSIONER.

Filed November 9, 1935.

To the Honorable Walter C. Lindley, Judge of said Court:

Elizabeth Wright and Charles C. Wright, by Graham & Dysert, their attorneys, respectfully show to the court that their amended petition has been filed and is pending in this court, for an extension of time within which to pay their debts; that no first creditors meeting has yet been conducted; that Harvey Gross, Conciliation Commissioner at Paris, Illinois, to whom said matter was referred, is and has been the attorney of record in a case in which the liability of these petitioners is involved, on a check signed by the brother of the petitioner Elizabeth Wright and delivered to her, and by her delivered to William S. Logan, one of her creditors, of Paris, Illinois; that the maker of said check has never paid the same and there is a controversy between Elizabeth Wright, said William S. Logan and said maker, as to whether or not Elizabeth Wright is liable for the amount of said check, One Hundred Fifty ($150.00) Dollars; that said Conciliation Commissioner is the attorney for the maker of said check; that this check has been inventoried by the petitioners since they filed their said amended petition, and under the circumstances said Commissioner is disqualified because of said facts, to act in said matter as such Commissioner, and petitioners therefore pray that he should be directed to return all the papers

in said matter to the Referee, and that the Referee be directed to send the same to the Conciliation Commissioner of Iroquois or Champaign County instead of to the said Harvey Gross.

(Signed) Elizabeth Wright,
(Signed) Charles C. Wright,
Debtors.

Allowed & Cause Referred to James A. Solon, Comr. for Champaign Co. 11/9/35. (Signed) Lindley.

Duly Verified.

26 ORDER OF RE-REFERENCE.

Entered Nov. 1935.

Entered November 12, 1935.

Whereas the petition of Elizabeth Wright and Charles C. Wright filed in this Court on the 5th day of April, A. D. 1935, praying that he be afforded an opportunity to effect a composition or extension of time to pay his debts under section 75 of the Bankruptcy Act, having been duly approved by order of this Court on the 5th day of April, A. D. 1935, and their Amended Petition filed on Oct. 9th-35, it is thereupon, ordered, that said matter be rereferred to James A. Solon of Champaign, Champaign County, one of the conciliation commissioners of this Court, to take such further proceedings therein as are required by said section, and if application for confirmation of proposal for composition or extension under said section 75 be duly filed with the conciliation commissioner, to hold, after due notice to creditors, a final creditors' meeting to consider said application for confirmation and to report his findings and conclusions relating to the confirmation or denial of such application to this Court, accompanied by all those papers, instruments, accounts and recommendations specified in Section 6 of General Order L. as promulgated by the Supreme Court of the United States; and that said Elizabeth Wright and Charles C. Wright, debtor, shall attend before said conciliation commissioner, instanter, and shall henceforth submit to such orders as may be made by said conciliation commissioner or by this Court relating to the proceedings under said section; and shall make and file with the conciliation commissioner a full and complete

inventory of all his property within ten days from the date of this order.

Witness the Honorable Walter C. Lindley, Judge of said Court, and the seal thereof at Danville, in said District on the 12th day of November, A. D. 1935.

D. H. Reed,
(Seal) *Clerk.*

(Endorsed): In the District Court of the United States * * (Caption—2414-D) * * Order of Re-Reference to Conciliation Commissioner Issued November 12th, 1935 Douglas H. Reed, Clerk.

Filed Jan. 4, 1939.

42 And afterwards on to-wit: the 4th day of January, A. D. 1939, there was filed in the office of the Clerk of said Court in said cause, a PETITION, which said petition was and now is in words and figures following, to-wit:

43 In the District Court of the United States.
* * (Caption—2414-D) * *

To the Honorable Walter C. Lindley, Judge of the United States District Court for the Eastern District of Illinois:

Gusta Logan, Harriet Logan Sawyer, and Exia Logan Reese, petitioners, respectfully show to the Court that at the November Term, A. D. 1932, of the Circuit Court of Edgar County, Illinois, in a certain suit therein pending, on the Chancery side thereof, W. S. Logan obtained a decree of foreclosure of a real estate mortgage against Elizabeth Wright and Charles C. Wright in the sum of $3822.12, and the costs of the proceeding; that it was provided in said decree that in default of payment of said sum of money, together with costs within 20 days from December 17, 1932, that the Master in Chancery of said Court should proceed to sell the premises named in said decree, viz:

The East Half of the Southeast Quarter of the Southeast Quarter of Section Twenty (20) Containing 20 acres, more or less, and the North Half of the Southwest Quarter of the Northwest Quarter of Section Twenty-one (21) containing 20 acres, more or less, all in Township Fourteen (14) North and in Range Twelve (12) West of the 2nd P. M., containing in all 40 acres, more or less, situated in the County of Edgar and State of Illinois;

after having advertised the same in accordance with the terms of the decree, which decree is recorded in full in Volume 66, page 442 of the records of said Court; that the said Elizabeth Wright and Charles C. Wright having failed to pay said sum of money and costs within said time, the then Master in Chancery of said court, on the 3rd day of Februray, 1933, found the amount due W. S. Logan to be $4101.52 and sold said premises in said decree mentioned and above described (the time and place of sale having been duly advertised according to law and said decree) to W. S. Logan, for the sum of $3801.52, he being the highest and best bidder therefor, leaving a deficit of $300.00; that
44 the said Master then and there delivered a certificate of purchase to said W. S. Logan, as provided by Statute; that under the statute of the State of Illinois the mortgagors, Elizabeth Wright and Charles C. Wright, had twelve months from the date of said sale to redeem and any judgment creditor or other lienholder had fifteen months from said date to redeem from said sale; that neither the mortgagors nor any lienholder or creditor exercised their right to redeem; that the day before the fifteen month redemption period expired, Elizabeth Wright and Charles C. Wright filed their petition under Section 74 of the Bankruptcy Act praying for a composition and agreement for an extension of time as provided by that Act; that a full hearing was had before the Referee in Bankruptcy for the District Court of the Eastern District of Illinois, and the Referee filed his order denying the petition for several reasons, among which one reason was in the words and figures following:

"* * * The Referee finds as a matter of law that if the twelve months period had expired for the purpose of exemption by the mortgagee, no contractal relation of debtor and creditor existed by and between the former mortgagee and mortgagor, and that the petition for extension was not filed within the time contemplated by the statute for restraining order or affecting the rights of the mortgagee.

"The mortgagors rights and any interest in the property ceased at the expiration of the twelve months provided by statute for redemption, and no petition for extension could avail in favor of the mortgagor subsequent to the date of such period of redemption."

It was, therefore, ordered that the petition be denied and the composition as presented be not confirmed; that because of the importance of the questions involved the Referee on

his own motion, referred the findings to the District Court for the Eastern District of Illinois; that thereafter the said District Court entered an order approving and confirming the order of the Referee from which order the petitioners, Elizabeth Wright and Charles C. Wright appealed to the United States Circuit Court of Appeals for the Seventh District, which court affirmed the order of the District Court on the 22nd day of February, 1935, and refused a renearing prayed by petitioners and entered a final order affirming the order of the District Court on the 25th day of March, 1935; (*Wright* v. *Logan*, 75 F. (2d) 687 and Amer. Bank-
45 ruptcy Reports, N. S. 28 page 94); that said order is in full force and effect to the present date. That after the fifteen months period of redemption had expired the said Master in Chancery executed and delivered to W. S. Logan a deed for said real estate, all in the manner requirtl by law.

That after the filing of the mandate of the United States Circuit Court of Appeals in the District Court, Elizabeth Wright and Charles C. Wright, on April 5, 1935, filed an amended petition asking for an extension of time to pay their debts under the Bankruptcy Act as amended, alleging that they desired to file a suit in the Edgar County Circuit Court for a decree allowing them to redeem after the period of redemption; that afterwards said chancery suit was tried in the Edgar County Circuit Court and a decree rendered against the said Elizabeth Wright and Charles C. Wright dismissing their complaint for want of equity; that thereafter the said Elizabeth Wright and Charles C. Wright appealed from the order of the Circuit Court dismissing their complaint, to the Appellate Court for the Third District of the State of Illinois; that on the 15th day of January, 1937, the Appellate Court reversed and remanded the decree of the Circuit Court with directions that the Circuit Court ascertain the amount due from the said Elizabeth Wright and Charles C. Wright to the said W. S. Logan; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the Court and that upon payment thereof the deed from the Master in Chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled and that the defendant Logan be required upon such redemption to reconvey by proper deed to Elizabeth Wright the title acquired by him to the property through said Master's deed and certificate. (See

opinion of the Appellate Court in *Wright* v. *Logan*, 288 Ill. App. 481.)

That the Statute of Illinois provides in Chapter 110, Paragraph 216 as follows:

"No new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the reviewing court."

46 That no mandate was filed in the Circuit Court of Edgar County within one year of January 15, 1937.

That on November 9, 1935, the Bankruptcy petition of Elizabeth Wright and Charles C. Wright was rereferred to James A. Solon, of Champaign County, Illinois, as Conciliation Commissioner; that on February 29, 1936, the said Elizabeth Wright and Charles C. Wright filed a new petition asking for a restraining order against all parties interested from obtaining any writ of restitution for said real estate; that a hearing on said petition was set for March 7, 1936.

Petitioners further represent that the said W. S. Logan is now deceased; that the petitioner, Gusta Logan, is the widow of W. S. Logan, and Harriet Logan Sawyer and Exia Logan Reese are daughters of the said W. S. Logan, Deceased; that petitioners file this petition on behalf of themselves and on behalf of all the other heirs and devisees of the said W. S. Logan, Deceased.

Petitioners further represent that no hearing was had on said March 7, 1936, and no hearing has ever been had since on said petition; that no steps have been taken before the said James A. Sol[illegible]; that the said Elizabeth Wright and Charles C. Wright have taken no steps toward having said hearing; that the said Elizabeth Wright and Charles C. Wright have not paid anything in accordance with the directions of the Appellate Court of Illinois and have not tendered any money in accordance with said finding; that nevertheless, the said Elizabeth Wright and Charles C. Wright are still in possession of said premises and without having made any offer of payment of the amount due to the heirs and devisees of W. S. Logan, Deceased.

Therefore, your petitioners respectfully ask the Court:

1. To order and direct the said James A. Solon to make a report within some reasonable time to be fixed by the Court.

2. That after a hearing on this their petition, the heirs

and devisees of said W. S. Logan be authorized to proceed and take all necessary steps to gain possession of said real estate and that an order be entered against the said
47 Elizabeth Wright and Charles C. Wright to vacate said premises and deliver possession of the same to the heirs and devisees of W. S. Logan, Deceased.

3. That in the alternative, that the Court determine the amount due under said foreclosure decree at this time and that it fix a reasonable time for the said Elizabeth Wright and Charles C. Wright to pay said amount and in case of their failure so to do that they surrender possession to the heirs and devisees of W. S. Logan, Deceased.

4. That the Court fix a time for a hearing on this their petition, and direct what notice shall be given to said Elizabeth Wright and Charles C. Wright of the time and place of such hearing.

Gusta Logan,
Harriet Logan Sawyer,
Exia Logan Reese,
Petitioners.

By O. M. Jones,
Their Attorney,
306 Adams Building,
Danville, Illinois.

State of Illinois, }
County of Vermilion. }

Exia Logan Reese, being first duly sworn on her oath says that the above and foregoing petition is true as therein alleged, to the best of her knowledge and as she verily believes.

Exia Logan Reese.

Subscribed and sworn to before me this 3rd day of January, A. D. 1939

Maru Grant,
(Seal) *Notary Public.*

48 Endorsed: In Bankruptcy No. 2414-D—In the Matter of Elizabeth Wright and Charles C. Wright, Debtors—Petition—Filed Jan. 4, 1939—D. H. Reed, Clerk—Jones, Grant and Sebat, Attorneys at Law, 306 Adams Building, Danville, Illinois.

49 And afterwards, on to-wit: the 14th day of January, A. D. 1939, there was filed in the office of the Clerk of said Court in said cause, a Motion to Dismiss, which said motion was and now is in words and figures following, to-wit: Filed Jan. 14, 1939.

50 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

MOTION TO DISMISS.

Filed Jan. 14, 1939, D. H. Reed, Clerk.

Now come Elizabeth Wright and Charles C. Wright, debtors in the above entitled cause, by their attorneys, and move the court to dismiss the petition filed herein on the 4th day of January, A. D. 1939 by Gusta Logan and others, through Jones, Grant and Sebat, their attorneys, because said petition fails to set forth facts sufficient to entitle the petitioners, or either of them, to any relief whatsoever, as prayed for in said petition. And for special grounds for this motion these debtors say:

1. That under the decision of the Appellate Court of Illinois, Third District, in the case of these debtors, Elizabeth Wright and Charles C. Wright *vs.* W. S. Logan and others, (288 Ill. App. 481), a decree of the Circuit Court of Edgar County, Illinois, was reversed and the cause was remanded to the Circuit Court of Edgar County, Illinois, by said Appellate Court, to ascertain the amount due, if any, from these debtors to the said W. S. Logan, since deceased, and that these debtors be permitted to redeem from said foreclosure sale of the real estate described in said petition, within a reasonable time to be fixed by the court, and that upon payment thereof the deed from the Master of Chancery conveying

51 said premises described in said decree of foreclosure be cancelled, and that the said Logan be required, upon such redemption, to reconvey by proper deed, the title he acquired to said property through said Master's deed and certificate, to these debtors; that said decree reversing and remanding said cause was entered on the 15th day of January, A. D. 1937 and that at and prior to said time these debtors had filed their respective

petitions in bankruptcy in the above entitled cause, under Section 74 of the Bankruptcy Act, and later amended the same to come under Section 75 of said Act, and said whole matter, including these debtors rights given them by said decree of said Appellate Court and all proceedings thereunder were under and within the exclusive jurisdiction of said Federal Court and by reason thereof the provisions of Chapter 110, Paragraph 216 of the Statutes of the State of Illinois, pleaded in said petition herein, were stayed, inoperative and legally ineffective, and required no steps or proceedings to be taken by these debtors for the filing of a mandate of said Appellate Court in said trial court within a year after said final determination by said reviewing court in order to have all the matters therein retired in said proceeding in said trial court in Edgar County, Illinois, or before the Conciliation Commissioner, James A. Solon, of Champaign, Illinois, to whom the above entitled bankruptcy proceedings were referred by this court on the 9th day of November, A. D. 1935, and where they are still pending and have been continuously pending since said date, and none of said petitioners have taken any steps whatever to enforce any alleged rights they are now claiming.

2. That the alleged facts in said petition wholly fail to show affirmatively wherein, at this time, said petitioners have any legal right to file this petition or where they are entitled to any relief as therein prayed for.

52 Wherefore, these debtors pray that said petition be dismissed at the cost of the petitioners, and that the debtors herein recover their costs by them wrongfully sustained.

(Signed) Elizabeth Wright,
Charles C. Wright.
By Steely, Steely, Graham & Dysert,
908 First National Bank Bldg.,
Danville, Illinois,
Attorneys for Debtors.

Endorsed: No. 2414-D In Bankruptcy—In the Matter of Elizabeth Wright and Charles C. Wright, Debtors. Motion to Dismiss—Filed Jan. 14, 1939—D. H. Reed, Clerk—Steely, Steely, Graham & Dysert, 908 First National Bank Bldg., Danville, Illinois, Attorneys for Debtors.

53 And afterwards, on to-wit: the 17th day of February, A. D. 1939, the following proceedings were had in said court in said cause, and entered of record, to-wit: Entered Feb. 17, 1939.

54 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

Lindley, Judge.

ORDER UPON MOTION TO DISMISS PETITION OF GUSTA LOGAN, ET AL., FOR RELIEF IN THE ALTERNATIVE.

Filed and Entered Feb. 17, 1939, D. H. Reed, Clerk.

Upon due consideration of the briefs and argument, it is ordered by the court that the debtors' motion to dismiss the petition of Gusta Logan, et al., filed herein January 4, 1939, be and the same is hereby denied and that the debtors answer said petition within ten days from this date. Thereupon, upon motion of either party or of the court, this cause will be set for hearing in order that the court may determine from the evidence whether petitioners are entitled to the relief prayed. Such evidence will include that of all acts and transactions of the debtors in the last six years with regard to the land involved, the amount of accrued indebtedness secured by the mortgage, the value of the land and any and all other pertinent or relevant facts and circumstances, in order that the court may determine what in equity should be done.

Entered this 17th day of February, A. D. 1939.

(Signed) Walter C. Lindley,
Judge.

Filed Feb. 27, 1939. 55 And afterwards, on to-wit: the 27th day of February, A. D. 1939, there was filed in the office of the Clerk of said Court in said cause, an Answer, which said answer was and now is in words and figures following, to-wit:

56 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

ANSWER.

Filed Feb. 27, 1939, D. H. Reed, Clerk.

The debtors, by way of answer to the petition herein, say:

1. That the petitioners have no authority, right, title or interest in the subject matter involved, which enables them as proper or necessary petitioners, to file this petition. On the contrary, W. S. Logan, to whom the note and mortgage in question was payable, died on or about February 22, 1936, leaving a Last Will and Testament which is in full force and effect, and that the Edgar County National Bank is Administrator of said Estate, and J. G. Humrichouse was appointed as Trustee and Receiver, by order of court, and title to said entire estate was vested in said Trustee, in trust, for certain purposes therein set forth; that said Administrator has not been discharged and said Trustee has not been released, and therefore said administrator and trustee are not only necessary but proper petitioners. Therefore, this court does not have any jurisdiction of the subject matter over these debtors and is powerless to enter any order in connection with the same, except an order of dismissal.

2. That these defendants did not owe the said W. S. Logan, in his lifetime, and do not now owe to his administrator, trustee, receiver, or to the petitioners herein,
57 on said mortgage note mentioned in the petition, the sum of money therein mentioned.

3. That the Appellate Court of the Third District of the State of Illinois, by its decision in reversing and remanding the case of these debtors against W. S. Logan, reversed the decree entered in said cause and remanded said case with directions that the court ascertain the

amount due from these debtors to the said W. S. Logan and that they be permitted to redeem within a reasonable time to be fixed by the court, and that upon payment thereof the deed from the Master in Chancery conveying the premises described in the deed of foreclosure to said Logan be cancelled and that said Logan be required, upon such redemption, to re-convey by proper deed, to said Elizabeth Wright, the title acquired by him to the property through said Master's deed and certificate.

4. That these debtors, under Section 75 of Chapter 8 of the Bankruptcy Act, are entitled to have all of their rights in all of their property preserved in the Bankruptcy Court of this jurisdiction, where said matter is now pending, including their right to rehabilitation and an extension of such time as said law provides within which to do so.

5. Debtors deny that Chapter 110, Para. 216 of the Code of Civil Procedure is applicable for any of the purposes alleged in said petition, because all of the debtors entire estate was during the year following the entry of said judgment drawn within the jurisdiction of said Bankruptcy Court.

6. Debtors deny that the petitioners are entitled to any relief whatever as prayed for in said petition.

Elizabeth Wright,
Charles C. Wright,
Debtors.

By Steely, Steely, Graham & Dysert,
Attorneys for Debtors,
908 First National Bank Bldg.,
Danville, Illinois.

58 State of Illinois } ss.
County of Vermilion }

Elizabeth Wright, being first duly sworn upon her oath deposes and says that she is one of the debtors in the above entitled cause; that she makes this affidavit for and on her own behalf, and on behalf of Charles C. Wright, the other debtor herein; that she has read the above and foregoing answer, and that the same in true as therein alleged, to the best of her knowledge and as she verily believes.

(Signed) Elizabeth Wright.

Subscribed and sworn to before me this 25 day of February, A. D. 1939.

Marie A. Timmons,
(Seal) *Notary Public.*

Endorsed: No. 2414-D In Bankruptcy—In the Matter of Elizabeth Wright and Charles C. Wright, Debtors—Answer—Filed Feb. 27, 1939—D. H. Reed, Clerk—Steely, Steely, Graham & Dysert, 908 First National Bank Bldg., Danville, Illinois, Attorneys for Debtors.

Entered Mar. 11, 1939.

59 And afterwards, on to-wit: the 11th day of March, A. D. 1939, the following further proceedings were had in said court in said cause and entered of record, to-wit:

60 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

ORDER UPON PETITION OF W. S. LOGAN, ET AL.

The debtors in this case are Elizabeth Wright and her husband. In November, 1932, W. S. Logan, the testate of petitioners, now deceased, a mortgagee, obtained a decree of foreclosure and sale upon forty acres of land belonging to Mrs. Wright for $3822.12 and costs. Pursuant to the decree, the property was sold by the master-in-chancery, on the 3rd day of February, 1933, at which time there was due the mortgagee $4101.52, to the latter for $3801.52, leaving a deficit of $300, for which judgment was entered against the debtors. Certificate of purchase duly issued.

Under the statute of Illinois, the mortgagors had twelve months and their creditors fifteen months within which to redeem. No redemption was made. On the last day before the expiration of the fifteen months period and almost three months after the debtors' right to redeem had expired, the latter filed their petition in this court under Section 74 of the Bankruptcy Act as amended, seeking an agreement for extension or composition as provided by the act. The referee, to whom the cause was referred, found that the mortgagors had no interest in this property at the time they filed their petition and that, therefore, there could be no valid proceedings for composition or extension, so far as the land involved was concerned. Upon review, this court approved his order and was affirmed by the United States

Circuit Court of Appeals in *Wright* v. *Logan*, 75 Fed. (2d) 685. In accord with the mandate of that court, the
61 order of this court remains in full force and effect.

Upon expiration of the period of redemption of fifteen months, the master-in-chancery executed and delivered to Logan a deed for the real estate.

The debtors filed suit in the state court, seeking a decree allowing them to redeem despite expiration of the period of redemption. They were defeated in the trial court but the decree was reversed by the Appellate Court, which directed that the relief be granted and that plaintiffs be permitted to redeem within a reasonable time to be fixed by the *nisi prius* court. *Wright* v. *Logan*, 288 Ill. App. 481.

Paragraph 216 of Chapter 110 of the Illinois Statutes provides that no new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the court of review. No mandate was filed in the trial court within one year of the date of the final determination of the reviewing court.

After the affirmance by the Court of Appeals and after its mandate had been filed in this court, the debtors, on April 5, 1935, filed an amended petition under Section 75 of the Bankruptcy Act as amended, asking for extension of time to pay their debts. The petition was referred to the conciliation commissioner. At that time debtors moved for a restraining order against the mortgagee and other creditors. No hearing was had upon this motion. The mortgagee having died, petitioners as devisees under his will are now the owners of all interest of the mortgagee by virtue of the premises aforesaid. No composition or extension agreement has been accepted by a majority of the creditors and filed with the conciliation commissioner, but the debtors have remained in possession of the land and enjoyed its fruit and product at all times since default was made in the payment of interest upon the mortgage prior to 1932.

The receiver of the state court collected rent from the debtors for a time but for the last four years no sub-
62 stantial amounts have been paid to the mortgagee, the conciliation commissioner or others by way of rent as required by the Frazier-Lemke Act. Thus, for all practical purposes the debtors have enjoyed a moratorium of seven years and for more than three years last past without payment of any substantial rent.

Mrs. Wright owns, in addition to the forty acres, a life estate in seventy acres which is good productive land. This is unincumbered except for the judgments hereafter mentioned. At the time she filed her schedules, she owed in addition to what was due the mortgagee some $4300 represented by judgments in the Circuit Court of Paris, Illinois, and $1278 to creditors who were unsecured. She testified that she has since reduced the judgment creditors' indebtedness by approximately $1000; that one judgment creditor holding judgment for $1164.26, is in bankruptcy; that she believes that she can adjust the latter for $500; that she has since paid to unsecured creditors some $545; that of the unsecured creditors, $300 in the form of a rental note to the mortgagee will be satisfied by satisfaction of the mortgage indebtedness.

The debtors conduct a dairy and farm the land, raising the ordinary farm crops on all portions of both the forty acres and the seventy acres, other than that necessary for pasturage and the lots where the home property which consists of a house of about eight rooms, a barn and some small buildings, is located. They retail milk to consumers and sell some in larger lots to merchants for retail. They have a tractor which was purchased in the last two years, an old one being traded in credit on the purchase price, some cash having been paid and the balance remaining due on the conditional sales contract.

On the undisputed evidence the land is fairly worth $5000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such credits as have been paid, is $5560.72. The debtor at one time had arranged to borrow for refinancing purposes from the Federal Land Bank $5000 and from one of its
63 associated affiliates, an additional sum of $1000. She had hoped to procure with this $6000 a satisfaction of the mortgage indebtedness and of the larger part of the judgment debts. She says she had an arrangement for the subordination of any judgment lien the owner of which would not accept a reduction. Apparently nothing has been done along this line for many months.

The debtors are not in very creditable position with regard to the mortgage indebtedness. They have not been diligent. They have made no redemption, although the state court has provided that they might do so. They have failed to comply with the federal act by paying the usual and customary rental. In the meantime, the mortgage indebted-

ness has increased. The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct. Seven years have passed since entry of the decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them. On the other hand the debtors have made some progress in the payment of other indebtedness. Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood.

The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, there would be a period of redemption of ninety days. Consequently it seems to me only equitable that the debtors should enjoy the same period of time they would have if the property should be sold, within which to make redemption. It would require about thirty days to make a sale and the act allows ninety
64 days for redemption. Accordingly, it is the order of the court that the jurisdiction of this court over the deed held by petitioners and over petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property, upon condition that they at once pay a reasonable rental for the use of the land during the farming season of 1938 and arrange to pay a reasonable rental for the present season to the conciliation commissioner. Obviously any rental paid will be credited upon the total amount of the mortgage indebtedness which will thereby be proportionately reduced. This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale and to make any and all possible adjustment and composition with their creditors. In other words, their rehabilitation must be completed within 120 days. In the absence of their inability to complete it, the court will at the end of said period, give full force and

effect to the deed held by petitioners. The conciliation commissioner will act in accord with this order.

Entered this 11th day of March, A. D. 1939.

Walter C. Lindley,
Judge.

Endorsed: In Bankruptcy No. 2414-D Elizabeth Wright and Charles C. Wright, Debtors. Order Upon Petition of W. S. Logan, et al. Filed and Entered Mar. 11, 1939. D. H. Reed, Clerk.

Filed Mar. 11, 1939.

27

STIPULATION.

(Filed March 11th, 1939.)

It Is Hereby Stipulated between Elizabeth Wright and Charles C. Wright, Debtors in the above styled proceeding, and Augusta Logan, Harriet Logan Sawyer, and Exia Logan Reese, as petitioners, as well as other Logan Heirs represented by counsel, that the amount due the Logan Estate as of March 9, 1939, is Five Thousand One Hundred Sixty-Nine Dollars and Fifty Cents ($5,169.50).

It Is Further Stipulated that the above sum of $5,169.50 does not include the Three Hundred Dollar ($300.00) item reported as a deficiency by the Master in Chancery in his report of sale to the Circuit Court of Edgar County, Illinois, in Chancery Case No. 7461; said report having been filed by said Master on February 3, 1933.

It Is Further Stipulated that interest on $300.00 at five per cent (5%) from February 3, 1933, to March 9, 1939, amounts to $91.22.

(Signed) Elizabeth Wright,
(Signed) Charles C. Wright,
Debtors.

(Signed) Augusta Logan,
(Signed) Harriet Logan Sawyer,
(Signed) Exia Logan Reese,
By Jones, Grant & Seba.,
Attorneys for Petitioners.

5169.50
391.22

$5560.72

65 And afterwards, on to-wit: the 6th day of January, A. D. 1940, the following further proceedings were had in said court in said cause and entered of record, to-wit: Entered Jan. 6, 1940.

66 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

(Filed Jan. 6, 1940, D. H. Reed, Clerk.)

Heretofore, on March 11, 1939, the court entered an order continuing the petition of the mortgage creditors for relief for 120 days and directed debtors to redeem from sale or complete rehabilitation within the terms of the Act within that time. This extension and continuance came to an end almost six months ago and no evidence of compliance with the order by debtors, has been presented. Upon motion of the mortgage creditors, therefore, now,

It is Ordered that the petition of Gusta Logan, et al., filed January 4, 1939, praying that the premises be surrendered to them, and answer of debtors thereto filed February 27, 1939, heretofore continued as aforesaid, be set for final hearing on January 12, 1940 at 9:30 a. m. in Danville, Illinois, and that before that date the conciliation commissioner file a current report to date.

Entered this 6th day of January, A. D. 1940.

(Signed) Walter C. Lindley,
Judge.

28 REPORT OF CONCILIATION COMMISSIONER. Filed Jan. 12, 1940.

(Filed January 12, 1940.)

To the Honorable Judges of the United States District Court, for the Eastern District of Illinois:

I, respectfully submit that the above cause has been pending before me as Conciliation Commissioner, and I herewith submit my report as follows:

November 13, 1935—Order of reference received, accompanied by petition and schedules, cause docketed.

November 26, 1935—Received $3.40 publication costs from Attorneys Graham & Dysert.

December 26, 1935—Mailing of notices of creditors' meeting.

January 9, 1936—Sworn claim William C. Wilson, $1,128.50, on file.

January 10, 1936—First creditors' meeting held.

Appearances:

Elizabeth Wright and Charles C. Wright, Debtors, Attorney F. C. VanSellar appearing for William S. Logan, Walter Hoenig and Allan Jay Parrish.

Bankrupts duly sworn and examined.

Sworn claim Walter Hoenig in the amount of $1,091.73 on file.

Sworn claim Allan J. Parrish in the amount of $1,369.60 on file.

Proposition for extension of time and composition by debtors on file.

29 January 10, 1936—Petition of William S. Logan asking to be dismissed as a party in said bankruptcy proceeding.

January 14, 1936—Petition filed by W. H. Hodge and others, creditors of Elizabeth and Charles C. Wright, requesting that a foreclosure proceeding in Edgar County be enjoined as against the debtors.

Notice to parties in the case of William S. Logan et al *vs.* Elizabeth Wright and Charles C. Wright, Foreclosure in the Circuit Court of Edgar County, and docketed in that court as number 2243-A. That the defendants in said foreclosure have filed a petition under Section 75 of the Bankruptcy Act.

March 21, 1939—Received from Elizabeth Wright $300.00 in payment of the 1938 rental of the East Half SE SE Sec. 20 and North Half SW of the NW of Sec. 21, all in Twp. 14 North, Range 12, West of the 2nd P. M.

March 28, 1939—Entered into a lease of 40 acres, a part of the bankrupt estate, with Elizabeth Wright and Charles C. Wright for the crop year from the 1st of March, 1939 to the 1st of March, 1940, at an annual rental of $300.00, payable $150.00 September 1, 1939 and $150.00 on January 1, 1940. This lease was made pursuant to an order of the United States District Court for the Eastern District of Illinois entered in Bankruptcy No. 2414-D on March 11, 1939.

July 19, 1939—Received from Elizabeth Wright $150.00 in payment of the first instalment of rent for the crop year 1939 due upon her lease.

Your Commissioner further reports that the said Elizabeth Wright has made numerous efforts to obtain a loan upon the 40 acre tract above mentioned and the 70 acre tract in which she has a life estate. Your Commissioner has been informed by V. W. Johnston, a loan broker of Champaign, Illinois, that the Alliance Life Insurance Company would loan $3,000 upon the 40 acre tract and that he, Mr. Johnston, had hopes of interesting a private lender in loaning the balance of the money required to effect a redemption, such loan to be made upon the 70 acres.

The Debtor, Elizabeth Wright, and Mr. O. B. Pace, who has an office as State Farm Debt Adjustment Supervisor under the Farm Security Administration, were in my office today. Mr. Pace is, I believe, conversant with Mrs. Wright's financial condition and has been helpful to her in working out a way to effect redemption of her farm. The present plan is to obtain a loan upon the 40 acres of $3,000, which Mr. V. W. Johnston has assured them can be obtained from the Alliance Life Insurance Company, a sale of live stock and dairy equipment which will bring $1,050.00, sale of corn and hay which will bring $325.00 and the children of Mrs. Wright to raise $900.00 among themselves. Mrs. Wright has exhibited to me receipts from all her debtors, with the exception of Ray Green and D. R. Noonan, whose claims total around $38.00, and the Logan heirs. I believe that if she can raise the amounts indicated by Mr. Pace she can pay off the mortgage indebtedness to the Logan heirs. I know that Mrs. Wright has been granted a large number of continuances in the above matter for the purpose of effecting the redemption which she is now trying to make, but I feel that she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined. Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.

Your Commissioner further respectfully reports that he now has on hand the sum of $450.00 which are rental receipts from Elizabeth Wright.

Respectfully submitted this 11th day of January, A. D. 1940.

James A. Solon,
Conciliation Commissioner, Champaign County, Illinois.

Entered Jan. 12, 1940.

67 And afterwards, on to-wit: the 12th day of January, A. D. 1940, the following further proceedings were had in said court in said cause and entered of record, to-wit:

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

In accordance with the former order entered herein in January 6, A. D. 1940, and after due notice to all parties in interest, a final hearing was had on this 12th day of January, 1940, at nine o'clock A. M.; the debtors, Elizabeth Wright and Charles C. Wright, appeared by Leo Burke, their attorneys, and Elizabeth Wright appeared in person; and the petitioners appearing by Jones, Grant and Sebat, their attorneys. The debtor, Elizabeth Wright, was sworn and examined in open Court. Also the Conciliation Commissioner, James A. Solon, in accordance with order of January 6, 1940, filed his current report to date.

After hearing the testimony, and the arguments of attorneys, and the Court being fully advised in the premises, it is ordered that the prayer of the original petition should be granted.

It Is Therefore, Ordered that the possession of the premises described in said original petition, be surrendered and restored to petitioners, by Elizabeth Wright and Charles Wright, on or before March 1st, 1940, or in the alternative pay to the Clerk of this Court for distribution among petitioners in keeping with the further order of Court, the sum of $5,560.72, plus interest at 5% from March 11, 1939, to the date of payment.

Entered this 12th day of January, A. D. 1940.

Walter C. Lindley,
Judge.

Endorsed: In Bankruptcy No. 2414-D In the Matter of the Elizabeth Wright and Charles Wright, Debtors—Order of Distribution—Filed & Entered Jan 12, 1940—D. H. Reed, Clerk—Jones, Grant and Sebat, 306 Adams Building, Danville, Illinois.

31 REPORT OF DEBTORS RELATIVE TO COMPROMISE SETTLEMENT.

Filed Mar. 2, 1940.

Filed March 2, 1940.

To James A. Solon, Conciliation Commissioner for Champaign County, Illinois:

Your debtor petitioners respectfully report to your Honor that they have submitted the proposition for extension of time and settlement to all creditors and parties in interest in said cause, and that said proposition read as follows:

The undersigned petitioners respectfully submit the following proposition of extension of time and offer of settlement with their creditors:

1. If given a reasonable time, to be fixed by the Commissioner, of not less than Ninety (90) days, they will make an application to the Federal Land Bank of St. Louis, Missouri, for enough money to pay William S. Logan, who has secured a Master's Deed under a foreclosure on their farm, and an appeal is being prosecuted to the Supmere Court by the petitioners from a decree dismissing the complaint in the Circuit Court of Edgar County, Illinois, asking for specific performance by William S. Logan of an oral agreement extending the time of equity of redemption of the petitioner beyond the twelve (12) months period and after the Master's deed was taken out.

2. That petitioners will agree to pay all other creditors within a period of three (3) or five (5) years, with Five Percent (5%) interest.

32 That said proposition has not been accepted by any of the creditors in this proceeding.

Your petitioners further report that subsequent to the filing of the abovementioned proposition for extension of time and settlement, they have made settlement with all creditors with the exception of the following:

Ray Green, Paris, Illinois $392.19;
D. R. Nooman, approximately 12.00;

and the heirs of William S. Logan who hold a Master's Certificate to farm land in Edgar County occupied by debtors, and a deficiency judgment arising out of the same foreclosure proceedings in which the above Master's

Certificate was issued, the amount necessary to redeem from such Master's Certificate and pay such deficiency judgment being Fifty-five Hundred Sixty Dollars and Seventy-two Cents ($5560.72) and interest thereon from the 11th day of March, 1939.

Your petitioners further represent that they have offered to the heirs of William S. Logan the sum of One Thousand Dollars ($1,000.00) to apply upon the amount owing to the said Logan heirs for the purpose of obtaining an extension of time in which to redeem such farm land. That said offer has not been accepted, and that your petitioners are now willing to pay into this Court said sum of One Thousand Dollars ($1,000.00) to apply towards the redemption of the land held by the Logan heirs under Master's Certificate of Sale.

Your petitioners further report that they do not have a majority in both number and amount of all present claims effected in the above proceeding, and respectfully submit that they be given relief and pray to be allowed to file an amended petition praying for an adjudication under Section 75-s as provided by the Acts of Congress relating to Bankruptcy.

Dated at Champaign, Illinois this 1st day of March, A. D. 1940.

Elizabeth Wright,
Charles C. Wright.

Duly Verified.

69 And afterwards, on to-wit: the 2nd day of March, A. D. 1940, there was tendered in the office of the Clerk of said Court in said cause, an Amended Debtors' Petition in Proceedings Under Section 70-Sub-Section S of the Bankruptcy Act, which said petition was and is in words and figures following, to-wit:

70 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Mar. 2. 1940.
* * (Caption—2414-D) * *

AMENDED DEBTORS' PETITION IN PROCEEDINGS UNDER SECTION 75 SUB-SECTION S OF THE BANKRUPTCY ACT.

Tendered Mar. 2, 1940. D. H. Reed, Clerk.

To the Honorable Walter C. Lindley, Judge of the United States District Court:

The petition of Elizabeth Wright and Charles C. Wright respectfully shows:

1. That on the 5th day of April, 1935, petitioners filed their petition for a composition or extension under Section 75 of the Bankruptcy Act, which petition was thereafter approved and referred to Harvey Gross, Conciliation Commissioner of Edgar County, Illinois, and was then referred to James A. Solou, Conciliation Commissioner for Champaign County, Illinois on November 9, 1935.

2. That petitioners have failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by their composition or extension proposal.

Wherefore, petitioners hereby amend their said petition pursuant to the provisions of Section 75-s of the Bankruptcy Act, and ask to be adjudged a bankrupt, and for such other and further relief to which they may be entitled.

71 Dated at Champaign, Illinois this 1st day of March, A. D. 1940.

(Signed) Elizabeth Wright,
(Signed) Charles C. Wright.

Subscribed and sworn to before me this 1st day of March, A. D. 1940 by Elizabeth Wright.

(Signed) Majorie E. Robinson,
(Seal) *Notary Public.*

No endorsements.

72 And afterwards, on to-wit: the 5th day of March, A. D. 1940, the following further proceedings were had in said court in said cause and entered of record, to-wit:

Entered Mar. 5, 1940. 73 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

MEMORANDUM UPON DEBTOR'S AMENDED PETITION.

LINDLEY, *Judge.*

The court has at all times treated this proceedings as if it were under 75S and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by the orders entered March 11, 1939 and January 12, 1940, both of which are incorporated herein by way of reference.

For the reasons previously stated; because the debtors on January 12, 1940, voluntarily offered to surrender title to and possession of the premises, if they were allowed to remain in possession until March 1, 1940; because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act and has for years been treated as being within and given full enjoyment of all rights under 75S, it is

Ordered by the Court that the debtors' amended petition tendered herein March 2, 1940, be and the same is hereby denied; that any and all prohibition upon the intervening petitioners from exercising their rights under deed heretofore obtained by them be and the same is hereby removed; that the deed heretofore issued by the master-in-chancery be given full force and effect and that possession of the premises described in the original petition be surrendered immediately to said intervening petitioner, to-wit, Gusta Logan, Harriet Logan Sawyer and Exia
74 Logan Reese, by the debtors Elizabeth Wright and Charles C. Wright, as heretofore provided in the order of January 12, 1940.

It is further ordered that the debtor proceedings herein be and the same are hereby dismissed.

Entered this 5th day of March, A. D. 1940.

Walter C. Lindley,
Judge.

Endorsed: In Bankruptcy No. 2414-D—Matter of Elizabeth Wright and Charles C. Wright, Debtors—Memo upon debtor's amended petition—Filed & Entered Mar 5 1940—D. H. Reed, Clerk.

75 And afterwards, on to-wit: the 27th day of March, A. D. 1940, there was filed in the office of the Clerk of said court in said cause, a Notice and Petition for Appeal, together with order approving same, which said Notice and Petition for Appeal was and now is in words and figures following, to-wit: Filed Mar. 27, 1940.

76 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Eastern District of Illinois.

In the Matter of
Elizabeth Wright and
Charles C. Wright,
Debtors. } In Bankruptcy No. 2414-D.

NOTICE AND PETITION FOR APPEAL.

Filed Mar. 27, 1940. D. H. Reed, Clerk.

Notice Is Hereby Given, that the above named debtors do hereby appeal from the final order and judgment entered in the above entitled cause on the 5th day of March, A. D. 1940, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the Assignment of Errors filed herewith; which said order is as follows:

"Ordered by the Court that the debtors' amended petition tendered herein March 2, 1940, be and the same is hereby denied; that any and all prohibition upon the intervening petitioners from exercising their rights under deed heretofore obtained by them be and the same is hereby removed; that the deed heretofore issued by the master-in-chancery be given full force and effect and that possession of the premises described in the original petition be surrendered immediately to said intervening petitioners, to-wit: Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, by the debtors, Elizabeth Wright and Charles C. Wright, as heretofore provided in the order of January 12, 1940.

It is further ordered that the debtor proceedings herein be and the same are hereby dismissed."

Debtors pray this appeal may be allowed and that the original transcript of the record, proceedings and papers

upon which said order was made, be used and duly authenticated, and sent to the United States Circuit Court of Appeals, for the Seventh Circuit.

(Signed) Steely, Steely, Graham & Dysert,
Attorneys for Debtors,
908 First National Bank Building,
Danville, Illinois.

77 The foregoing Petition for Appeal is allowed this 27th day of March, A. D. 1940.

(Signed) Walter C. Lindley,
Judge.

Endorsed: No. 2414-D In Bankruptcy. In the Matter of Elizabeth Wright and Charles C. Wright, Debtors. Notice and Petition for Appeal.

78 District Court of the United States of America,

Eastern District of Illinois.

Filed Mar. 27, 1940. D. H. Reed, Clerk.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify that a copy of the Notice and Petition for Appeal, together with order approving same, has this day been mailed to Jones, Grant & Sebat, Attorneys at Law, Adams Building, Danville, Illinois, in The Matter of Elizabeth Wright and Charles C. Wright, Debtors, in Bankruptcy No. 2414-D, by this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Danville, in the District aforesaid, this 27th day of March, A. D. 1940.

D. H. Reed,
Clerk.

(Seal)

79 And on the same day, to-wit: the 27th day of March, A. D. 1940, there was filed in the office of the Clerk of said Court in said cause, an Assignment of Errors, which said Assignment of Errors, was and now is in words and figures following, to-wit:

80 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Mar. 2[illegible] 1940.
* * (Caption—2414-D) * *

ASSIGNMENT OF ERRORS.

Filed Mar. 27, 1940. D. H. Reed, Clerk.

The Appellants in the above entitled cause assign errors on the record and proceedings herein, as follows:

1. The Court erred, as a matter of law, in entering the written order in said cause on March 5, A. D. 1940, and filed with the clerk of said court, dismissing debtors proceedings herein, and in denying debtors' amended petition tendered March 2, 1940, and thereby requiring the debtors and appellants herein to turn over possession of the property therein referred to, to the Intervening Petitioners therein named.

2. The court, as a matter of law, should have allowed said petition of said debtors, filed herein on March 2, 1940 and should have retained jurisdiction of all of said proceedings.

3. The Court erred in entering its order filed with the clerk of this court on March 5, 1940, in said cause.

4. Because the equities of this cause are with the above named debtors, and as a matter of fact, they are entitled to the relief prayed for in said pending proceedings, and the order of this court dismissing the same was contrary to the evidence.

81 Wherefore, debtors pray that said order of said District Court of the United States for the Eastern District of Illinois, entered herein on the 5th day of March, A. D. 1940, may be set aside and reversed for further proceedings in conformity with the provisions of the Bankruptcy Act and the decisions of the Federal Court applicable thereto.

Steely, Steely, Graham & Dysert,
Attorneys for Debtors,
908 First National Bank Building,
Danville, Illinois.

82 (Endorsed) No. 2414-D In Bankruptcy. In the Matter of Elizabeth Wright and Charles C. Wright, Debtors. Assignment of Errors.

Filed Mar. 27, 1940. 83 And on the same day, to-wit: the 27th day of March, A. D. 1940, there was filed in the office of the Clerk of said Court in said Cause, a Praecipe for Record on Appeal, which said Praecipe was and now is in words and figures following, to-wit:

84 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

PRAECIPE FOR RECORD ON APPEAL.

Filed Mar. 27, 1940. D. H. Reed, Clerk.

The Clerk of the District Court is requested and directed to incorporate into the record on appeal in this cause, the following:

1. Placita.
2. Petition, No. 2414-D of Elizabeth Wright and Charles C. Wright, Debtors, and all amendments thereto.
3. The order of reference by said Court to James A. Solon, Conciliation Commissioner.
4. The Intervening Petition of Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, filed herein on January 4, 1939.
5. Motion to Dismiss said Intervening Petition, and Order of Court upon said Motion to Dismiss.
6. Answer of Debtors to Intervening Petition.
7. Order of Court entered March 11th, 1939, and all subsequent orders extending the time for debtors to make payment.
8. Final Order of Court entered March 5, 1940.
9. Notice and Petition for Appeal herein, to the United States Circuit Court of Appeals for the Seventh Circuit, and Order allowing said Petition for Appeal.
10. Assignment of Errors.
11. Praecipe for Record on Appeal.
12. Appeal Bond for costs and approval thereon, filed herein.
13. Clerk's Certificate.

Steely, Steely, Graham & Dysert,
Attorneys for Debtor-Appellants.

Endorsed: No. 2414-D In Bankruptcy—In the Matter of Elizabeth Wright and Charles C. Wright, Debtors—Praecipe for Record on Appeal.

85 And on the same day, to-wit: the 27th day of March, A. D. 1940, there was filed in the office of the Clerk of said Court in said Cause, a Cost Bond on Appeal, duly approved by the Court, which said Cost Bond on Appeal was and now is in words and figures following, to-wit: Filed Mar. 27, 1940.

86 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

COST BOND ON APPEAL.

Filed Mar. 27, 1940. D. H. Reed, Clerk.

Know All Men By These Presents: That we, Elizabeth Wright and Charles C. Wright, as principal, and Frank Englum and Marie W. Woodyard, as Sureties, acknowledge ourselves to be jointly indebted to Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, appellees in the above entitled cause, in the sum of Two Hundred Fifty ($250.00) Dollars, conditioned that, whereas, on the 5th day of March, A. D. 1940, in the District Court of the United States for the Eastern District of Illinois, in a suit depending in that court, wherein Elizabeth Wright and Charles C. Wright, were debtors, and Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, were intervening petitioners, In Bankruptcy No. 2414-D, a judgment, order or decree was rendered against the said Elizabeth Wright and Charles C. Wright, Debtors, and the said Elizabeth Wright and Charles C. Wright having filed in the office of the Clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals for the Seventh Circuit, to be holden in the City of Chicago, in the State of Illinois, on the 1st day of October, A. D. 1940, next.

Now, the condition of the above obligation is such that if the said Elizabeth Wright and Charles C. Wright shall prosecute their appeal to effect and answer all costs, if the appeal is dismissed or the judgment, order or decree affirmed, or of such costs as the appellate court may award if the judgment, order or decree is modified, then the above obligation is void, else to remain in full force and effect.

87 (Signed) Elizabeth Wright,
(Signed) Charles C. Wright,
Principals.
(Signed) Marie W. Woodyard,
(Signed) Frank Englum,
Sureties.

Approved this 27th day of March, A. D. 1940.
(Signed) Walter C. Lindley,
Judge.

State of Illinois } ss.
County of Edgar }

Marie W. Woodyard, of Paris, Illinois, being duly sworn on her oath deposes and says that she is the owner of the following described land:

Sixty-one (61) acres in the County Clerk's Subdivision of the W½ of the SW¼; NE¼ of the NW¼ and N½ of the SW¼ of the NW¼ in Section 7, Town 16 North, Range 11 West of the 2nd P. M., in Edgar County, Illinois,
of a value of at least Nine Thousand Dollars ($9,000.00) and that there is no mortgage or encumbrance of any kind on said land.

Further affiant saith not.

Dated at Paris, Illinois, this 16th day of March, A. D. 1940.

(Signed) Marie W. Woodyard.

Subscribed and sworn to before me this 16th day of March, A. D. 1940.

(Signed) June Drake,
(Seal) *Notary Public.*

My Commission expires 2/20/44.

88 State of Illinois } ss.
County of Edgar }

Frank Englum, of R. R. #7, Paris, Illinois, being duly sworn on his oath deposes and says:

That he is the owner of 240 acres of land in Section 18, Town 14 North, Range 12 West of the 2nd P. M., Edgar County, Illinois, together with the improvements thereon and that the value of said land is worth the sum of Twenty-four Thousand and no/100 Dollars ($24,000.00), and that there is no encumbrance or lien of any kind on said land.

Further affiant saith not.

Dated at Paris, Illinois, this 16th day of March, A. D. 1940.

(Signed) Frank Englum.

Subscribed and sworn to before me this 16th day of March, A. D. 1940.

(Signed) June Drake,
Notary Public.

(Seal).

My commission expires 2/20/44.

Endorsed: No. 2414-D In Bankruptcy. In the Matter of Elizabeth Wright and Charles C. Wright, Debtors. Cost Bond on Appeal.

33 NOTICE. Filed Mar. 28, 1940.

Filed March 28, 1940.

To: Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, Intervening Petitioners, and to O. M. Jones, Their Attorney.

Please Take Notice, that a Notice and Petition for Appeal in the above entitled cause and court, was filed on the 27th day of March, A. D. 1940 with the clerk of said court and said appeal was allowed by the court thereof, to the United States Circuit Court of Appeals for the Seventh Circuit, and an Appeal Bond for costs was filed and approved, also Praecipe for Record on Appeal designating the portion of the record, proceedings and evidence to be contained in said record on appeal, viz.:

1. Placita.
2. Petition, No. 2414-D of Elizabeth Wright and Charles C. Wright, Debtors, and all amendments thereto.
3. The order of reference by said Court to James A. Solon, Conciliation Commissioner.
4. The Intervening Petition of Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, filed herein on January 4, 1939.
5. Motion to Dismiss said Intervening Petition, and Order of Court upon said Motion to Dismiss.
6. Answer of Debtors to Intervening Petition.
7. Order of Court entered March 11th, 1939, and all subsequent orders extending the time for debtors to make payment.
8. Final Order of Court entered March 5, 1940.

34 9. Notice and Petition for Appeal herein, to the United States Circuit Court of Appeals for the

Seventh District, and Order allowing said Petition for Appeal.

10. Assignment of Errors.

11. Praecipe for Record on Appeal.

12. Appeal Bond for costs and approval thereon, filed herein.

13. Clerk's Certificate.

that an Assignment of Errors was also filed with the clerk of said court, with a concise statement of the points which we intend to rely upon on said appeal, viz.:

1. The Court erred, as a matter of law, in entering the written order in said cause on March 5, A. D. 1940, and filed with the clerk of said court, dismissing debtors proceedings herein, and in denying debtors' amended petition tendered March 2, 1940, and thereby requiring the debtors and appellants herein to turn over possession of the property therein referred to, to the Intervening Petitioners therein named.

2. The Court, as a matter of law, should have allowed said petition of said debtors, filed herein on March 2, 1940, and should have retained jurisdiction of all of said proceedings.

3. The Court erred in entering its order filed with the clerk of this court on March 5, 1940, in said cause.

4. Because the equities of this cause are with the above named debtors, and as a matter of fact, they are entitled to the relief prayed for in said pending proceedings, and the order of this court dismissing the same was contrary to the evidence.

Steely, Steely, Graham & Dysert,
Attorneys for Debtor-Appellants,
908 First National Bank Building,
Danville, Illinois.

Received a copy of the above Notice this 28th day of March, A. D. 1940.

O. M. Jones per J. E. Sebat,
Attorney for Intervening Petitioners.

89 And afterwards, on to-wit: the 27th day of April, A. D. 1940, the following further proceedings were had in said court in said cause and entered of record, to-wit: Entered Apr. 27, 1940.

90 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—2414-D) * *

ORDER EXTENDING TIME TO PREPARE AND FILE RECORD ON APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Upon application of Elizabeth Wright and Charles C. Wright, debtors in the above entitled cause, made and presented within Forty (40) days from the date of the Notice of Appeal in said cause, said Notice of Appeal being served and filed, as required by law, on the 27th day of March, A. D. 1940, the time for filing the record on appeal and docketing the same is hereby extended for said purposes, to the 20th day of June, A. D. 1940.

Dated this 27th day of April, A. D. 1940.

(Signed) Walter C. Lindley,
Judge.

As Attorneys for the Appellees in the above entitled cause, we hereby consent to the above order extending the time for preparing, filing and docketing the Record on Appeal, as above provided.

Dated this 27th day of April, A. D. 1940.

(Signed) O. M. Jones;
Attorneys for Appellees.

Endorsed: No. 2414-D In the Matter of Elizabeth Wright and Charles C. Wright, Debtors. Order Extending Time to Prepare and File Record on Appeal. Filed Apr. 27, 1940. D. H. Reed, Clerk.

35 SUPPLEMENTAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed July 1, 1940.

To Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese:

The appellants designate the following as supplementary to the designation of contents of the record on appeal heretofore served and filed:

1. All documents included in the record (those herein designated and those originally designated) shall have omitted therefrom all superfluous matter such as captions, verifications and duplications of matter. In place of verifications the words (Duly verified) shall be printed.

2. The clerk of the Circuit Court of Appeals will please have the documents, including those here designated and those originally designated, printed in chronological order as they were filed or entered.

3. The petition and schedules under Section 74 heretofore designated will be omitted as extraneous.

4. Entries on the Bankruptcy Docket beginning with the entry of May 3, 1934, and ending with that of April 27, 1940.

5. Order approving petition under Section 74 issued May 3, 1934.

6. Restraining order issued May 3, 1934.

7. Order granting leave to file petition under Section 75 entered April 5, 1935.

36 8. Petition under Section 75 filed April 5, 1935. Also of the schedules filed therewith the following: Schedule A-1, Section 2, with total; Schedule A-2; Schedule B-1; Schedule B-2; Schedule B-3; Schedule B-5; Summary of Debts and Assets, including only the items which have figures entered therein. The signatures are to be omitted from all schedules. Any other portion of said schedules will be omitted.

9. Order of Approval of petition under Section 75 and reference issued April 5, 1935.

10. Order dissolving injunction issued June 11, 1935.

11. "Commissioner's Final Report" filed September 28, 1935.

12. Order to show cause entered September 30, 1935.

13. Amended debtors' petition filed October 9, 1935.

14. Order of approval issued October 14, 1935.
15. Order to refer issued October 14, 1935.
16. Order of rereference issued October 14, 1935.
17. Petition for reference to new conciliation commissioner filed November 9, 1935 and the order of allowance and reference indorsed thereon and issued on the same date.
18. Order of rereference issued November 12, 1935.
19. Stipulation filed March 11, 1939.
20. Report of conciliation commissioner filed January 12, 1940.
21. "Report of Debtors Relative to Compromise Settlement" which contains a prayer "to be allowed to file an amended petition praying for an adjudication under Section 75 (s) as provided by the Acts of Congress relating to Bankruptcy" filed March 2, 1940.
22. Notice to appellees and receipt therefor dated and filed March 28, 1940.
23. This supplemental designation.
24. Certificate of clerk.
25. If any document designated herein shall have previously been designated it will be printed in the record but once.

37 PROOF OF SERVICE OF SUPPLEMENTAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed July 1, 1940.

United States of America
Eastern District of Illinois
County of Vermilan:

Walter V. Dysert being duly sworn says that on July 1, 1940, he served upon the appellees the attached Supplemental Designation of Contents of Record on Appeal by handing a duplicate thereof to their counsel of record Messrs. Jones, Grant & Sebat, Danville, Illinois.

Walter V. Dysert.
Walter V. Dysert.

Sworn to before me and in my presence subscribed this 1st day of July, 1940.

Marie A. Timmons,
Notary Public.

(Seal)

91 United States of America } ss.
Eastern District of Illinois }

I, D. H. Reed, Clerk of the United States District Court in and for the Eastern District of Illinois, do hereby certify that the annexed and foregoing is a true full and complete transcript of the record and proceedings in the Matter of Elizabeth Wright and Charles C. Wright, Debtors, in Bankruptcy No. 2414-D, as fully as the same appears from the original documents now on file and of record in my office as Clerk of said Court, and made in accordance with Praecipe for Record on Appeal filed herein by Appellants in this said case.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Danville, Illinois, this 14th day of June, A. D. 1940.

D. W. Reed,
Clerk.

(Seal)

By Marie Burnett,
Deputy Clerk.

38 District Court of the United States of America,

Eastern District of Illinois.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be a true copy of entries on Bankruptcy Docket, documents and orders in the Matter of Elizabeth Wright and Charles C. Wright, Debtors, in Bankruptcy No. 2414-D, (excepting captions, verifications and all irrelevant and formal portions thereof) as fully as the same appears from the original documents and orders now on file and of record in this Court and made in accordance with the Supplemental Designation of Contents of Record on Appeal, filed herein on July 1st, 1940.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Danville, in the District aforesaid, this 2nd day of August, A. D. 1940.

D. W. Reed,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Sept. 16, 1940.

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants.
vs.
Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese,
Appellees.

On Appeal from the United States District Court for the Eastern District of Illinois.

District Court Case No. 2414-D.

The following documents were designated both in the original and supplemental Designation of Contents of Record on Appeal. If both designations were followed there would be a duplication of documents in the record on appeal. Therefore counsel for the appellants and for the appellees have hereby stipulated that the following documents as designated shall be printed only once in the record.

1. Debtors' petition and schedules filed April 5, 1935.
2. Order to show cause entered September 30, 1935.
3. Amended debtors' petition filed October 9, 1935.
4. Order of rereference issued November 12, 1935.

Elmer McClain,
Walter V. Dysert,
Attorneys for Appellants.
O. M. James,
John A. Arnold,
Attorney for Appellees.

Endorsed: Filed Sept. 16, 1940. Kenneth J. Carrick, Clerk.

Filed Nov. 11, 1940.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants.
vs.
Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese,
Appellees.

On Appeal from the United States District Court for the Eastern District of Illinois.

District Court Case No. 2414-D.

STIPULATION.

The original Designation of the Record on Appeal contained as one of the documents to be printed, the petition and schedules under Section 74 filed on May 3, 1934. The Supplemental Designation of the Record on Appeal, Item 3, directed that the previously designated petition and schedules under Section 74 should be omitted from the record.

Counsel for the appellants and appellees hereby stipulate that the petition and schedules under Section 74 filed May 3, 1934, shall be omitted from the record on appeal.

Elmer McClain,
Walter V. Dysert,
Attorneys for Appellants.
John A. Arnold and
Jones, Grant and Sebat,
Attorneys for Appellees.

Endorsed: Filed Nov. 11, 1940. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the twenty-sixth day of November, 1940, in the following entitled cause:

Cause No. 7368.

In the Matter of Elizabeth Wright and Charles C. Wright, Debtors.

Elizabeth Wright and Charles C. Wright,
Appellants,

vs.

Gusta Logan, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of June, A. D. 1941.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

In the Matter of Elizabeth Wright and Charles C. Wright, Debtors.

Elizabeth Wright and Charles C. Wright,
Appellants,
vs.
Gusta Logan, Harriett Logan Sawyer and Exia Logan Reese,

Appeal from the District Court of the United States for the Eastern District of Illinois.

7368

And, to-wit: On the twentieth day of June, 1940, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants,
vs.
Gusta Logan, Harriet Logan Sawyer, and Exia Logan Reese,
Appellees.

On Appeal from the United States District Court of the Eastern District of Illinois.

District Court Case No. 2414-D.

To the Clerk:

Kindly enter the name of Elmer McClain, Lima, Ohio, as attorney of record for the appellants in the above matter.

This is intended to constitute my appearance as counsel for the appellants pursuant to Rule 11 (4) of the Rules of this court.

Elmer McClain,
Lima, Ohio.

Endorsed: Filed June 20, 1940. Kenneth J. Carrick, Clerk.

And, on the same day, to-wit: On the twentieth day of June, 1940, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright, *Appellants,* *vs.* Gusta Logan, Harriet Logan Sawyer, and Exia Logan Reese, *Appellees.*	On Appeal from the United States District Court of the Eastern District of Illinois. District Court Case No. 2414-D.

To the Clerk:

Kindly enter the name of Walter V. Dysert, 908 First National Bank Building, Danville, Illinois, as attorney of record for the appellants in the above matter.

This is intended to constitute my appearance as counsel for the appellants pursuant to Rule 11 (4) of the Rules of this Court.

Walter V. Dysert,
908 First National Bank Building,
Danville, Illinois.

Endorsed: Filed June 20, 1940. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-eighth day of January, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 28, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of Elizabeth Wright, *et al.*, Debtors.

Elizabeth Wright, *et al.*, *Appellants*,
vs.
Gusta Logan, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Eastern District of Illinois.

7368

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Elmer McClain, counsel for appellants, and by Mr. Harold F. Lindley, counsel for appellees, and the Court takes this matter under advisement.

And afterwards, to-wit: On the fifteenth day of March, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7368. October Term, 1940, January Session, 1941.

In the Matter of
ELIZABETH WRIGHT and CHARLES C. WRIGHT,
Debtors.

ELIZABETH WRIGHT and CHARLES C. WRIGHT,
Appellants,
vs.
GUSTA LOGAN, HARRIET LOGAN SAWYER and EXIA LOGAN REESE,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

March 15, 1941.

Before EVANS, SPARKS and KERNER, *Circuit Judges.*

SPARKS, *Circuit Judge.* Appellants profess to be aggrieved by an order of the District Court, entered in a proceeding under section 75 of the Bankruptcy Act. The order denied their amended petition for adjudication under subsection (s); removed all prohibition theretofore imposed upon appellees from exercising their rights under a deed obtained under foreclosure proceedings; provided that that deed be given full force and effect and that possession of the premises therein described be surrendered by appellants immediately; and dismissed the debtor proceedings.

The parties have been engaged in litigation as to the property here involved since 1932 when the mortgagee (now deceased), instituted a suit for foreclosure. Appellees are his widow and daughters. A certificate of sale issued Feb-

ruary 3, 1933. Appellants did not redeem within the twelve months provided by Illinois statute (Chap. 77, § 18) for redemption by the mortgagor.

On May 3, 1934, the day before the expiration of the three month additional period during which creditors are permitted to redeem properties, appellants filed their petition for composition and extension of their debts under section 74 of the Bankruptcy Act. Confirmation of the proposed extension was denied by the referee whose order was confirmed by the District Court and affirmed by this court on appeal. (*Wright* v. *Logan*, 75 F. 2d 687). After mandate issued, appellants on April 5, 1935, filed their petition, and were granted leave to file under section 75 of the Bankruptcy Act. Thereafter, while the bankruptcy proceeding was pending, they filed suit in a state court seeking to redeem the real estate from the mortgage foreclosure sale on the theory that the mortgagee who then held the certificate of sale had orally agreed to permit redemption at any time, in reliance upon which promise they had expended over $500 in permanent improvements on the property. A decree against them in the trial court was reversed by the Appellate Court which, on January 15, 1937, ruled that they were entitled to redeem, and remanded the cause with directions to the court to ascertain the amount due from appellants to the mortgagee and fix a reasonable time during which the former might pay the amount due and redeem the premises. The court also directed that, upon such payment, the deed theretofore issued by the master on the certificate of sale should be canceled, and the mortgagee should reconvey to appellants the title acquired on the master's certificate. *Wright et al.* v. *Logan*, 288 Ill. App. 481.

Under the provisions of the Illinois statute (Chap. 110, § 212) "No new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the reviewing court." Appellants did not comply with this statutory provision, and have never filed the mandate of the Illinois Appellate Court which was necessary to enable them to avail themselves of the benefit of the decision of that court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon their failure to follow up the decision of the Appellate Court, as provided by the statute.

In the meantime, after it appeared that appellants were not going to be able to obtain necessary consents to their proposal of composition under section 75, the District Court, on September 30, 1935, entered a rule to show cause why appellants should not either amend their petition to include a prayer for adjudication under subsection (s), or have their petition dismissed. In response, appellants amended their petition to ask again for an opportunity to effect a composition with their creditors. After a reference and rereference of this petition, with a hearing set for March 7, 1936, which was never had (without objection from appellants), nothing further was done in the proceeding until January, 1939, when appellees filed their petition asking for a report of the Conciliator on the proceeding, and that thereafter they be allowed to obtain possession of the real estate, or in the alternative, that the court determine the amount due under the foreclosure decree and fix a reasonable time for appellants to pay that amount, or, upon their failure to do so, they be ordered to surrender possession of the real estate. Upon hearing, March 11, 1939, the court continued the petition for 120 days, directing the debtors to redeem the property within that time for an amount agreed upon by the parties, or complete their rehabilitation within the terms of the Act. The court fixed the time of 120 days because that corresponded to the time it would take to effect a sale if one were necessary, plus the 90 days permitted by the farmer-debtor statute for redemption. Appellants were, however, ordered to pay a reasonable rental for the preceding and ensuing seasons, to be credited upon the total amount of the mortgage indebtedness. The court stated in its order that if the rehabilitation were not completed within the 120 days, it would give full force and effect to the deed then held by appellees.

January 12, 1940, upon a showing that appellants had neither redeemed nor rehabilitated, the court ordered them to surrender possession of the premises on or before March 2, or pay into court the $5,560 for appellees. This extended time was allowed on the promise of appellants that they would voluntarily surrender possession if they were permitted to remain until March 1. However, instead of surrendering possession March 1, on March 2, appellants filed an amended petition seeking adjudication under section 75(s), and further relief under the provisions of that stat-

ute. It was in response to this petition that the court entered the order now appealed from, dismissing the proceedings and directing surrender of possession of the real estate to appellees.

We are in complete accord with the decision of the District Court that he was without right or power to deprive appellees of their rights any longer. Subsection (s) provides that any farmer failing to obtain the acceptance of a majority of his creditors may amend his petition or answer asking to be adjudged a bankrupt. No time is specified within which such application is to be made, but we have construed the statute to provide that a reasonable time is to be allowed to enable the debtor to effect a composition with his creditors, or, failing that, to apply to the court for adjudication in bankruptcy. *In re Price*, 99 F. 2d 691; *In re Pate*, 99 F. 2d 694. See also *Buttars* v. *Utah Corp.*, 116 F. 2d 622. We are convinced that the privileges conferred upon the debtor by this remedial statute impose upon him a corresponding duty to move expeditiously in order to avail himself of its benefits. Certainly it cannot be construed to permit him to allow his proceeding to lie dormant for years, and then, after expressly promising to surrender possession of the premises involved if he does not pay up within a specified time, invoke its benefits. We conclude that appellants who have heretofore had all the benefits to which they could possibly have been entitled under the provisions of section 75(s) without filing formal application for such benefits, are not now entitled to obtain a repetition of those same benefits by filing their petition for adjudication in bankruptcy.

Decree

AFFIRMED.

Endorsed: Filed Mar. 15, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fifteenth day of March, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, March 15, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of Elizabeth Wright, *et al.*, Debtors.

Elizabeth Wright, *et al.*, *Appellants*,

7368 *vs.*

Gusta Logan, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Eastern District of Illinois.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the thirty-first day of March, 1941, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for rehearing is not copied here.

And afterwards, to-wit: On the ninth day of April, 1941, there was filed in the office of the Clerk of this Court, an answer to petition for rehearing, which said answer is not copied here.

And afterwards, to-wit: On the twenty-first day of May, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, May 21, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of Elizabeth Wright, *et al.*, Debtors.

Elizabeth Wright, *et al.*, *Appellants*,

7368 *vs.*

Gusta Logan, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Eastern District of Illinois.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

And afterwards, to-wit: On the twenty-third day of May, 1941, there was filed in the office of the Clerk of this Court, a motion to stay the mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright, *Appellants,* *vs.* Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, *Appellees.*	Case No. 7368.

MOTION TO STAY MANDATE.

The appellants, Elizabeth Wright and Charles C. Wright, move the court for an order staying the issuance of the mandate herein pending the disposition by the Supreme Court of a petition for certiorari.

Elizabeth Wright and
Charles C. Wright,
Elmer McClain,
By Elmer McClain,
Attorney for Appellants.

Lima, Ohio,
May 22, 1941.

PROOF OF SERVICE.

I certify that prior to the filing of the foregoing Motion for order for a stay of the mandate pending disposition by the Supreme Court of a petition for certiorari, I served upon the appellees above named a copy of said document by mailing it, postage paid, to their attorneys of record, Messrs. Paul F. Jones and Harold F. Lindley, 306 Adams Building, Danville, Illinois, and to Mr. John A. Arnold, Boatmen's Bank Building, St. Louis, Missouri.

Elmer McClain,
Elmer McClain,
Attorney for the Appellants.

United States of America,
Northern District of Ohio,
County of Allen. } ss:

Elmer McClain, being first duly sworn, this 22nd day of May, 1941, says that the statements made in the foregoing proof of service are true.

Henry W. Neff,
Notary Public.

(Notary Seal)

Henry W. Neff
Notary Public, Allen County, Ohio.
My Commission Expires Mar. 6, 1942.

Endorsed: Filed May 23, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-eighth day of May, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, May 28, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of Elizabeth Wright, *et al.*, Debtors.

Elizabeth Wright, *et al.*, *Appellants*,
vs.
Gusta Logan, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Eastern District of Illinois.

7368

On motion of counsel for appellants, it is ordered that the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

And afterwards, to-wit: On the fifth day of June, 1941, there was filed in the office of the Clerk of this Court, a motion to further stay mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants,
vs.
Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese,
Appellees.
} Case No. 7368.

MOTION TO FURTHER STAY MANDATE.

The petition for rehearing was denied May 21, 1941. An order of this court has stayed the mandate under Rule 25 for thirty days which will expire June 20, 1941.

The appellants have instructed their counsel to apply to the Supreme Court for a writ of certiorari. Counsel will be unable to prepare, have printed and file their petition, record and brief for certiorari within said thirty days because of intervening court matters which will wholly occupy his time for several weeks.

Counsel for the appellants therefore requests a further stay of the mandate of this court for forty-five days, that is, until August 4, 1941.

Elmer McClain,
Elmer McClain,
Counsel for the Appellants.

Lima, Ohio, June 3, 1941.

Proof of Service.

I certify that prior to the filing of the foregoing Motion for an Order for a Further Stay of the Mandate pending application for certiorari to the Supreme Court, I served upon the appellees above named a copy of said document by mailing it, postage paid, to their attorneys of record, Messrs. Paul F. Jones, and Harold F. Lindley, 306 Adams Building, Danville, Illinois, and to Mr. John A. Arnold, Boatman's Bank Building, St. Louis, Missouri.

Elmer McClain,
Elmer McClain,
Attorney for the appellants.

United States of America,
Northern District of Ohio,
County of Allen. } ss.

Elmer McClain, being first duly sworn, this 4th day of June, 1941, says that the statements made in the foregoing proof of service are true.

Henry W. Neff,
Notary Public.

(Notary Seal)

Henry W. Neff
Notary Public, Allen County, Ohio.
My Commission Expires Mar. 6, 1942.

Endorsed: Filed June 5, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the ninth day of June, 1941, there was filed in the office of the Clerk of this Court, an answer to further stay of mandate, which said answer is in words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants,
vs.
Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese,
Appellees.
} Case No. 7368.

ANSWER TO FURTHER STAY MANDATE.

Now come Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, by their attorneys, and file this, their answer to the motion to further stay mandate, filed herein on to-wit: June 4, 1941, and in support of said motion, show unto the court as follows:

1. That this honorable court handed down its decision in this cause on March 15, 1941.

2. That this cause has been in litigation since 1932 and involves title to real estate.

3. That a petition for re-hearing was filed by appellants on March 31, 1941, which was denied on May 21, 1941.

4. That appellants applied for and obtained a stay of mandate until June 20, 1941.

5. That application is now made by the appellants for a further stay of mandate to August 4, 1941.

6. That no facts are set forth to further stay mandate showing due diligence or showing any good cause for the stay prayed for.

7. That the motion for the further stay contains only conclusions of counsel.

8. That the original stay of 30 days is ample time within which petition for certiorari might be filed with the Supreme Court and due to the length of time this cause has been in litigation and the fact that real estate is involved, an additional stay as requested would be unreasonable.

Wherefore, your appellees pray that the motion to further stay mandate be denied.

Dated at Danville, Illinois, June 6, A. D. 1941.

Paul F. Jones,
Harold F. Lindley,
John A. Arnold,
Attorneys for Appellees.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Elizabeth Wright and Charles C. Wright,
Appellants,
vs.
Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese,
Appellees.
} Case No. 7368.

To: Elizabeth Wright, Charles C. Wright, and Elmer McClain, their attorney:

NOTICE.

Please take notice that the undersigned attorneys for appellees will on the 7th day of June, A. D. 1941, file in the United States Circuit Court of Appeals for the Seventh Circuit of Chicago, Illinois, an answer to the motion to further stay mandate in the above entitled cause, a copy of which answer is hereto attached.

Dated this 6th day of June, A. D. 1941.

Paul F. Jones,
Harold F. Lindley,
John A. Arnold,
Attorneys for Appellees.

Proof of Service.

United States of America
Eastern District of Illinois
County of Vermilion
State of Illinois
} ss.

Harold F. Lindley, being first duly sworn, deposes and says that on the 6th day of June, A. D. 1941, prior to the filing of the foregoing answer and notice, he served upon the appellants above named, a copy of said notice and answer by causing it to be mailed, postage prepaid to the attorney of record, Mr. Elmer McClain, Lima, Ohio, the said documents being enclosed in a securely sealed envelope and

properly addressed and deposited in the United States mails in Danville, Illinois.

Harold F. Lindley,
One of the Attorneys for Appellees.

Subscribed and sworn to before me this 6th day of June, A. D. 1941.

Barbara Swallow,
(Seal) *Notary Public.*

Endorsed: Filed June 9, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the tenth day of June, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 10, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of Elizabeth Wright, *et al.*, Debtors.

Elizabeth Wright, *et al.*, *Appellants*,
vs.
Gusta Logan, *et al.*, *Appellees.*

7368

Appeal from the District Court of the United States for the Eastern District of Illinois.

On motion of counsel for appellants, it is ordered that the stay of the mandate of this Court in this cause be, and it is hereby, extended to July 1, 1941.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (excepting briefs of counsel, motion and order relative to time for filing briefs, motion and order relative to supplemental designation of record and stipulations relative to printing record) in the following entitled cause:

Cause No. 7368.

In the Matter of Elizabeth Wright and Charles C. Wright, Debtors.

Elizabeth Wright and Charles C. Wright,
Appellants,

vs.

Gusta Logan, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of June, A. D. 1941.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7562)

FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 1 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND
EXIA LOGAN REESE, RESPONDENTS.

PETITION AND BRIEF

For Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

ELMER MCCLAIN,
Lima, Ohio,
WILLIAM LEMKE,
Washington, D. C.,
Counsel for Petitioners.

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Supreme Court of the United States

OCTOBER TERM, 1940.

No. .....

ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

PETITION

For a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

(The brief in support of this petition begins at page 9).

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States.

Your petitioners respectfully show:

I.

A SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition presents the question whether a farmer debtor may be denied the right to file an amended petition for the three year moratorium upon the theory that the administration of proceedings for composition or extension in the court's opinion has already given the farmer debtor the "equivalent of a three year moratorium." The time consumed was due to the acts of the court itself.

The questions submitted arise out of Section 75 of the Bankruptcy Act; 11 U. S. C., Section 203, which relates to proceedings for the rehabilitation of farmer debtors.

The decision below is reported as *Wright* v. *Logan*, 119 F. 2d 354, and it appears at pages 68 to 71 of the record which is submitted herewith.

The final order (and opinion) of the bankruptcy court which was the subject of the appeal below is at R. 48. This order refers to previous orders and opinions of the court at R. 36 to 40, and at R. 44. The latter order refers to a former order at R. 41. It is necessary to read all four orders for a clear understanding of the final order.

After failing to secure composition or extension under Section 75 (a) to (r) the farmer debtors filed their amended petition under Section 75 (s) (R. 47, R. 5, second entry of March 2, 1940).[1]

---

[1]The notation made by the clerk of the bankruptcy court for the record at R. 47 designates this amended petition as having been "Tendered" but the original docket entry made by the clerk designates it as filed (R. 5, third entry of March 2, 1940). This docket entry reads: "Mch. 2-40 Filed Amended debtor's petition in proceedings under Section 75, sub. (s)." The Appellate Court opinion says "On March 2, appellants filed an amended petition" (R. 70, bottom of page).

The bankruptcy court (1) denied the amended petition upon the ground that the farmer debtors already had "enjoyed" the "equivalent" of proceedings under Section 75 (s) (R. 48); (2) it removed all restrictions upon the exercise by the mortgage holders of all rights under a deed issued while proceedings under Section 75 (a) to (r) were pending; (3) it gave full force and effect to said deed; (4) it ordered the farmer debtors to surrender possession of their farm and (5) it dismissed the farmer debtor proceedings. The Circuit Court of Appeals affirmed the bankruptcy court's dismissal upon the same ground (R. 68 to 71).

II.

STATEMENT OF THE BASIS OF THE JURISDICTION OF THIS COURT.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The final judgment of the court below (R. 72) became final on May 21, 1941, when a petition for rehearing was denied (R. 73). This petition is filed within three months thereafter.

III.

THE QUESTIONS SUBMITTED.

The questions submitted are:

1.

Whether the bankruptcy court could deny the amended petition of the farmer debtors by which they sought rehabilitation under the three year farmer debtor moratorium provision of Section 75 (s) because the court

concluded they already had the substantial benefits of Section 75 (s) under the administration of the proceedings pursuant to Section 75 (a) to (r) for composition or extension.

2.

Whether the bankruptcy court could dismiss the farmer debtor proceedings when the farmer debtors had on file, or had left with the clerk for filing, their amended petition under Section 75 (s).

3.

Whether the bankruptcy court without compliance with Section 75 (o) could give full force and effect to a deed in foreclosure delivered to the mortgage holders during pendency of proceedings under Section 75 (a) to (r) for composition or extension.

4.

Whether the bankruptcy court, without compliance with Section 75 (o), could authorize the mortgage holders to exercise all rights as grantees under a deed in foreclosure for composition or extension.

5.

Whether the bankruptcy court could order the farmer debtors to surrender possession of their farm when they had on file, or had left with the clerk for filing, their amended petition under Section 75 (s).

6.

Whether the bankruptcy court, while proceedings were pending for composition or extension under Section 75 (a) to (r), could lawfully order the farmer debtors to redeem their security by paying a certain sum of money.

IV.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

The decision below is in conflict with the decision of this court in *John Hancock* v. *Bartels*, 308 U. S. 180. That decision held that a farmer debtor whose petition under Section 75 (a) to (r) has failed to accomplish composition or extension has a right to seek a three year moratorium and redemption of his property from mortgage by invoking Section 75 (s) through an amended petition. The decision below denied that right.

2.

In so far as the decision below may be defended upon the ground of the length of time the proceedings were pending under Section 75 (a) to (r) for composition or extension (said length of time being due to the acts of the court itself), it is in conflict with the decision of this court in *Borchard* v. *California*, 310 U. S. 311.

3.

The decision below is in conflict with the decision of this court in *Kalb* v. *Feuerstein*, 308 U. S. 433, which decided that a deed in foreclosure delivered during the pendency of proceedings under section 75 (a) to (r) is absolutely void; that the grantees in said deed take no right whatsoever, and that their possession pursuant to such deed is unlawful and void.

4.

The decision below is in direct conflict with the decisions of other federal courts.

It is in conflict in the following Circuit Court of Appeals decisions:

Second Circuit:

Federal Land Bank v. *Hansen*, 109 F. 2d 139.

Fifth Circuit:

McCook v. *Federal Land Bank*, 108 F. 2d 185.

Sixth Circuit:

Ellis v. *Connecticut Mutual Life Insurance Company*, 111 F. 2d 896.
Trego v. *Wright*, 111 F. 2d 990
Schreiver v. *Oxford*, 116 F. 2d 684.

Seventh Circuit:

Zumkehr v. *Steinman*, 108 F. 2d 448.

Eighth Circuit:

Peterson v. *John Hancock*, 116 F. 2d 148.

Ninth Circuit:

Cohan v. *Elder*, 112 F. 2d 967.
Cohan v. *Elder*, 118 F. 2d 850.

Tenth Circuit:

Paradise Land Company v. *Federal Land Bank*, 108 F. 2d 832.

It is in conflict with the following District Court decisions:

District Court of Idaho:

In re Shaw, 35 Fed. Supp. 337.
In re Haun, 35 Fed. Supp. 338.

District Court of Illinois:

In re Storm, Commerce Clearing House, Bankruptcy Law Service, Paragraph 52579.

District Court of New Hampshire:

In re Byrenius, 30 Fed. Supp. 243.

District Court of New York:

In re Williams, Commerce Clearing House, Bankruptcy Law Service, Paragraphs 53225 and 53226.

In re Mahaffey, 34 Fed. Supp. 760.

District Court of Pennsylvania:

In re Kauffman, Commerce Clearing House, Bankruptcy Law Service, Paragraph 53175.

5.

The decision of the court below is directly in conflict with the decision of another Circuit Court of Appeals on the same subject. *Cohan* v. *Elder*, 118 F. 2d 850 (C. C. A. 9). Certiorari denied May 26, 1941.

Wherefore your petitioners pray that a writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit directing it to certify and send to this court a transcript of the record and proceedings thereon to the end that this cause may be received and determined by this Court and for all other relief as may be proper.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
WILLIAM LEMKE,
Washington, D. C.,
Counsel for Petitioners.

Lima, Ohio
June 19, 1941

Supreme Court of the United States

OCTOBER TERM, 1940.

No. .....

ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

BRIEF

In Support of Petition for Writ of Certiorari.

The Subject Index precedes the Petition for Certiorari.

All emphasis is supplied unless otherwise stated.

I.

THE REPORT OF THE DECISION BELOW.

The opinion below is *Wright* v. *Logan*, 119 F. 2d 354, and it appears at pages 68 to 71 of the record.

II.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The basis for the jurisdiction of this court has been stated at page 3 of the preceding petition for certiorari.

III.

STATEMENT OF THE CASE.

Following a decree in foreclosure the farm of the petitioners was sold and a certificate of purchase was issued to the mortgage holder Logan (R. 26, f. 43, R. 20, f. 19, R. 27, f. 44).

The petitioners originally filed a petition under Section 74 of the Bankruptcy Act which provides for the relief of individual debtors. This petition under Section 74 was pending from May 3, 1934, to April 5, 1935 (R. 2, entries of May 3, 1934, to April 5, 1935). By order of court the reference under Section 74 was set aside and leave was given to file a petition as farmer debtors (R. 2, four entries of April 5, 1935. R. 7, f. 5, R. 8, f. 6).

They filed their farmer debtors' petition on April 5, 1935, under Section 75 (a) to (r) and it was referred to a conciliation commissioner (R. 8, f. 6, R. 2, entries of April 5, 1935). At this time and for more than a year and a half afterward they had by state law a right of redemption by contract with Logan, the mortgage holder. *Wright* v. *Logan*, 288 Ill. App. 481.

The conciliation commissioner made his final report (R. 18, f. 16) stating that there was a "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor" (This "case" upon appeal was the decision in *Wright* v. *Logan*, 288 Ill. App. 481,

which has just been referred to). The conciliation commissioner also stated that the farmer debtors claimed the proceeding was not affected by the decision that the original Frazier-Lemke Law (Act of June 28, 1934, original Section 75 (s)) was unconstitutional. The conciliation commissioner's report reflected the uncertainty at the time concerning the nature of the farmer debtor law.

The farmer debtors later applied for leave to continue further under Section 75 (a) to (r) to work out a composition or an extension with the mortgage holder Logan (R. 19, f. 18). The bankruptcy court granted the application (R. 22, f. 21), and referred the case back to the conciliation commissioner "for such proceedings as provided under subsection (g) of Section 75 as amended" (R. 23, f. 23). Because of the conflicting interest of the conciliation commissioner the reference was vacated and the case was finally referred to Conciliation Commissioner Solon to proceed under Section 75 (a) to (r) for composition or extension (R. 24, f. 24, R. 25, f. 26).

While the proceeding was pending before the conciliation commissioner the case in the state courts to determine whether a right of redemption existed came by appeal to the Appellate Court of Illinois and was finally decided in *Wright* v. *Logan*, 288 Ill. App. 481, on January 15, 1937. It was held that the farmer debtors had by contract with the mortgage holder, Logan, the right of redemption (This was long after the farmer debtor petition was filed on April 5, 1935, R. 8, f. 6).

Meanwhile and following the decision of the state court negotiations for redemption proceeded under the reference to the conciliation commissioner. The farmer debtors submitted a formal proposal. Report of Conciliation Commissioner Solon (R. 41 to 43, R. 42, just preceding folio 29).

The farmer debtors made numerous efforts to obtain a loan through private agencies and through the State

Farm Adjustment Supervisor under the federal Farm Security Administration. The conciliation commissioner reported funds were in sight, with other available funds, sufficient to pay off the Logan mortgage (R. 43). Settlement of practically all debts except the Logan claim was achieved (R. 43, middle of the page). There was more than enough money to pay the Logan mortgage but Logan refused to sign the necessary papers (R. 21, preceding f. 20).

The district judge ordered the farmer debtors to pay rent and they paid rent and taxes (R. 4, entry of March 11, 1939, R. 42 and 43, entries of March 21, 1939, March 28, 1939, July 19, 1939, and next to last paragraph on page 43).

While the proceeding was pending the master's deed in foreclosure was, without compliance with Section 75 (o), unlawfully delivered to the mortgagee, Logan. The facts and references to the record relating to the effect of the delivery of this deed are given in the note below.[2] It was not until March 5, 1940, that the bankruptcy court ordered (in the final order appealed from) that "the deed heretofore issued by the master in chancery be given full force and effect" (R. 48). This order was ineffective because the deed was utterly void. *Kalb* v. *Feuerstein*, 308 U. S. 433.

---

[2]There is in the record an "Order Dissolving Injunction" (R. 17, f. 14). This order referred to a previous order **under Section 74** which was entered May 3, 1934, eleven months before the petition under Section 75 was filed (R. 7, f. 4. R. 8, f. 6). It had no relation to proceedings under Section 75. The bankruptcy court fully recognized that the mortgage remained subject to the farmer debtor proceedings notwithstanding the unlawful delivery of the master's deed as is shown by the following:

On March 11, 1939, the district judge said:

"The deed held by the mortgagees has been retained in their possession under order of this court directing that it **shall not be** recorded or **given any effect** until and unless this court shall so direct" (R. 39, top of page).

"Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other

On January 4, 1939, the heirs of Logan, the mortgagee, filed their petition in the bankruptcy court that resulted in the final order (R. 48) which is the subject of this petition for certiorari. This petition is found at R. 26 to 30. It prayed:

> (1) That the conciliation commissioner be ordered to make a report; (2) That the heirs of the mortgagee be permitted to take possession; (3) Or, in the alternative, that the court fix a sum at which the farmer debtors must redeem. The prayer of this petition is at the bottom of R. 29, and at the top of R. 30.

On March 9, 1939, the bankruptcy court heard the petition of the mortgage holders "to determine equity to be done" and ordered the parties to submit a stipulation as to the amount due (R. 4, entry of March 9, 1939). On March 11, 1939, the stipulation was filed that the amount due was $5,560.72 (R. 40). The bankruptcy court also issued an opinion-order (R. 36 to 40), which provided that:

> (1) The farmer debtors should pay rent for past and future (R. 39, f. 64); (2) The cause was continued for 120 days within which the farmer debtors must settle with their creditors (R. 39, bottom of page).

---

debts so that, there then being no liens against the life estate, they would have a means of livelihood" (R. 39, last sentence of paragraph which continues over from page 38).

"The petitioners have a deed to which the court may at any time have full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, there would be a period of redemption of 90 days" (R. 39, the beginning of the first whole paragraph on the page).

"Accordingly it is the order of the court that **the jurisdiction of this court over the deed** held by the petitioners **and over the petitioners be and the same is hereby retained**; that the debtors remain in possession and custody of the property, . . ." (R. 39, beginning at f. 64).

"This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale and to make any and all possible adjustments and composition with their creditors" R. 39, bottom of page).

On January 6, 1940, the bankruptcy court further continued the matter to January 12, and ordered the conciliation commissioner to "file a current report to date," and the conciliation commissioner complied. He concluded his report by saying:

> "I know that Mrs. Wright has been granted a large number of continuances in the above matter for the purpose of effecting the redemption which she is now trying to make, but I feel that **she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined.** Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.
>
> "Your Commissioner further respectfully reports that he now has on hand the sum of $450 which are rental receipts from Elizabeth Wright" (R. 41, at 43).

The court further continued the case to March 1, by which date the farmer debtors were ordered to pay the full amount of the judgment debt with interest or surrender possession (R. 5, second entry of January 12, 1940, R. 44).

On March 2, 1940, the matter was set for hearing on March 4, 1940 (R. 5, first entry of March 2, 1940). On the same day the farmer debtors filed their amended petition under Section 75 (s) (R. 5, third entry of March 2, 1940).

On March 4, 1940, the matter was further heard and taken under advisement (R. 5, entry of March 4, 1940). On March 5, the final order of the bankruptcy court was entered (R. 48). The appeal and this petition for certiorari stem from this final order.

SPECIFICATION OF ERRORS.

1.

The bankruptcy court could not deny to the farmer debtors the right to file their amended petition under Section 75 (s) upon their failure to achieve composition or extension under Section 75 (a) to (r).

2.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file their application for leave to file an amended petition under section 75 (s).

3.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file, or were tendering for filing, their amended petition under Section 75 (s).

4.

The bankruptcy court could not give force and effect to a deed delivered in violation of Section 75 (o).

5.

The bankruptcy court could not authorize the mortgage holders to exercise rights as grantees under a deed delivered in violation of Section 75 (o).

6.

The bankruptcy court could not require the farmer debtors to surrender possession of their real estate security while their application for the benefits of Section 75 (s) was pending.

7.

The bankruptcy court could not require the farmer debtors to redeem their mortgaged security while proceedings were pending under Section 75 (a) to (r).

SUMMARY OF THE ARGUMENT.

The order of the District Court denying the amended petition, lifting all restrictions from the mortgage holders, ordering the real estate to be surrendered, giving effect to the master's deed, and dismissing the proceedings was erroneous, and unlawfully deprived the appellants of the benefits of Section 75 (s).

ARGUMENT.

Preliminary Statement.

Some inaccurate statements appear in the record. It is desired to correct them lest they interfere with a proper understanding of the facts.

1.

At R. 36, f. 60, near the bottom of the page and at the top of R. 37, it is said in the opinion-order of the bankruptcy court (R. 36 to 40) that it had been held, and the United States Circuit Court of Appeals in *Wright* v. *Logan*, 75 F. 2d 685, had affirmed a holding that the farmer debtors had no interest or right in their farm when they filed a petition under Section 74, which preceded the filing under Section 75. The opinion of the Circuit Court of Appeals in *Wright* v. *Logan*, 75 F. 2d 685, disproves this statement. The only issue and the only point decided was that under Section 74 creditors must **consent in writing** to a proposal before the court can confirm it. The debtor's right in the property was not involved. We quote in support of this statement the first and the last paragraphs of the opinion of the Circuit Court of Appeals:

"Appellants (the debtors) submitted to the bankruptcy court **a proposition for a five year extension** of their debts, pursuant to Section 74 of the Bankruptcy Act. Upon hearing, **the referee denied confirmation of the proposed extension, which ruling was confirmed by the District Court, and is the subject matter of this appeal.**"

. . . . . .

"However liberally we are disposed to construe Section 74 with a view of according to debtors the full scope of the relief thereby contemplated, we are not at liberty to ignore its specific requirement that a majority of creditors in amount as well as in number must **consent in writing** to such proposed extension before the bankruptcy court may confirm it." *Wright* v. *Logan*, 75 F. 2d 685.

It is quite clear that the federal court did not consider the debtor's right in the property. In further support of the foregoing statement is the following: On January 15, 1937, which was more than two and a half years after the petition under Section 74 was filed, the Appellate Court of Illinois decided that the debtors then still had the right of redemption by agreement, with the mortgage holder Logan, which extended the statutory period for redemption. This decision, reported as *Wright* v. *Logan*, 288 Ill. App. 481, after first finding that the United States Circuit Court of Appeals **had not** made any holding concerning the debtors' interest in the property, then proceeded to decide that they had a right of redemption by agreement with Logan, the mortgage holder, independent of the state statutory period for redemption.

2.

In the opinion-order of March 11, 1939 (R. 36 to 40) it is further said, at R. 37, f. 61, that "Upon expiration of the period of redemption of 15 months, the master-in-chancery executed and delivered to Logan a deed for the real estate." This deed is void because it was executed

and delivered while the petition under Section 75 (a) to (r) was pending, and was in violation of Section 75 (o). The bankruptcy court at all times recognized the nullity of this deed and held the deed and the real estate to be subject to the jurisdiction of the bankruptcy court. This has been discussed at pages 12-13 of this brief in Note 2. Also it should be said that the debtors' original right of redemption does not rest upon statute but upon contract. This was finally determined by the decision of the state court in *Wright* v. *Logan*, 288 Ill. App. 481.

3.

The opinion-order of March 11, 1939 (R 36 to 40), at the bottom of page 38 says of the farmer debtors that "They **have failed to comply with the federal act by paying the usual and customary rental.**" The federal act under which the proceeding was pending (Section 75 (a) (r)) does not require the payment of rental. It is only Section 75 (s) which provides for rental payments and this farmer debtor proceeding has never been under Section 75 (s).

Two Essential Facts.

It is essential clearly to understand two things about this case:

1.

The Farmer Debtor Proceeding Was Never under Section 75 (s).

It was at all times under Section 75 (a) to (r). No petition under Section 75 (s) was ever filed until March 2, 1940, and then the bankruptcy court denied the right of the farmer debtors to proceed under it and dismissed the entire case.

References to the record relating to the foregoing statement:

R. 8, f. 6 "Debtor's petition" filed April 5, 1935, being the original petition under Section 75 (a) to (r) for composition or extension.

R. 19, f. 18 "Amended debtor's petition" filed October 9, 1935 (Application for leave to continue under Section 75 (a) to (r)).

R. 22, f. 21 "Order of Approval" entered October 14, 1935.

R. 22, f. 22 "Order Reinstating Cause, etc." entered October 14, 1935, specifically continuing the proceeding under Section 75 (g) of subsections (a) to (r).

R. 23, f. 23 "Order Re-Reference" entered October 14, 1935, specifically directing proceeding under Section 75 (a) to (r) for composition or extension.

R. 25, f. 26 "Order of Re-Reference" entered November 12, 1935, transferring reference to Conciliation Commissioner Solon because of the conflicting interest of the original conciliation commissioner, again specifically referring to proceeding under Section 75 (a) to (r) for composition or extension.

R. 41, f. 28 "Report of Conciliation Commissioner" filed January 12, 1940, giving the history of the proceeding under Section 75 (a) to (r) for composition or extension before conciliation commissioner Solon.

The only petition under Section 75 (s) ever presented to the court is that at R. 47, f. 70, filed March 2, 1940.

2.

The Bankruptcy Court Itself Kept the Proceeding under Sections 75 (a) to (r).

It was not until March 5, 1940, in the final order appealed from, at R. 48, that the court intimated that it considered the proceeding to be under Section 75 (s) for a

moratorium instead of under Section 75 (a) to (r). The court there said:

> "The court has at all times treated this proceeding **as if it were under 75S** and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by orders entered March 11, 1939, and January 12, 1940, both of which are incorporated herein by way of reference." Quoted from the final order at R. 48, first paragraph.

References to the record relating to the foregoing statement:

R. 22, f. 21	"Order of Approval" entered October 14, 1935, approving the application to continue under Section 75 (a) to (r) for "A composition or an extension of time to pay their debts."
R. 22, f. 22	"Order reinstating cause under Section 75 and for Reference to Conciliation Commissioner to Consider Composition or Extension Agreement." entered October 14, 1935, specifically reinstating the case under Section 75 (g) of subsection (a) to (r).
R. 23, f. 23	"Order of Re-Reference" entered October 14, 1935, specifically referring to proceeding for composition or extension.
R. 25, f. 26	"Order of Re-Reference" entered November 12, 1935, rereferring the proceeding to the new conciliation commissioner and again specifically directing proceeding for composition or extension.
R. 36 to 40 at R. 39	"Order Upon Petition of W. S. Logan, *et al.*" entered March 11, 1939, continuing for 120 days the matter of the creditors' motion for payment or dismissal.
R. 31, f. 21	"Report of Conciliation Commissioner" filed January 12, 1940, showing conduct of the proceeding before the conciliа-

	tion commissioner and recommending that further time be granted to the farmer detbors to come to a settlement with the mortgage holder. Bottom of R. 43.
R. 44, f. 68	Order granting the creditors' motion and requiring the farmer debtors to pay pay the mortgage debt in full or surrender possession by March 1, 1940.
R. 4, entry of March 2, 1940	Order, setting case for hearing March 4, 1940.
R. 48	Final order entered March 5, 1940, which was the subject of the appeal and is the subject of this petition for certiorari.

The Narrow Question.

The narrow question is whether a bankruptcy court may, by its own acts, keep a proceeding under Section 75 (a) to (r) pending under its superivsion for a length of time and then decide that it has given to the farmer debtor "the equivalent of proceedings under Section 75 (s)" and deny his statutory right to file an amended petition under Section 75 (s). As late as January 12, 1940, the court itself considered that further time should be extended. Report of conciliation commissioner, R. 41 to 43, at the bottom of page 43: "I feel that she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

If the bankruptcy court may do this then the "mandate of the statute"; the "scheme of the statute"; the "orderly procedure"; the "procedure prescribed by Section 75 (s)"; the "compliance with the procedure required by the statute"; the "orderly administration"; and so forth, so many times by this Court enjoined upon the bankruptcy court have been evaded, and the result would be to rewrite the Act, so as to vest in the court a power which Con-

gress did not plainly delegate." The foregoing well-known quotations are from the unanimous decisions of this court in *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California Bank*, 310 U. S. 311; and *Wright* v. *Union Central*, 311 U. S. 273.

The Borchard and Wright Dismissals Compared.

The length of time the proceeding was kept pending before the bankruptcy court is immaterial and can not be used by the parties and the court to deprive the farmer debtor of the statutory right to file an amended petition under Section 75 (s). The parties may not resort "to a procedure not contemplated by the statute." *Borchard* v. *California Bank*, 310 U. S. 311, 317. In the Borchard case the length of time was about the same as in this case:

	Petition 75 Filed	Dismissal Appealed From	From filing to Dismissal
Borchard Case	November 17, 1934	March 25, 1939	4 years 4 months
Elizabeth Wright Case	April 25, 1935	March 4, 1940	4 years 10 months

The basic reasoning upon which the bankruptcy court in each case based its order of dismissal is essentially the same: (1) the debt is more than the value of the security; (2) the creditors have waited several years; (3) the debtors have had ample opportunity to redeem their security; (4) it is fair and equitable to remove all restrictions from the mortgage holders.

We quote:

From the Borchard bankruptcy court reasoning (as recapitulated by this court in *Borchard* v. *California Bank*, 310 U. S. 311, at page 316):

> "The court took testimony as to value and concluded that the real estate was not worth more than $65,000 [the mortgage debt was $89,246]. It found that, as the debtors had had several years within which

to arrange an adjustment of their obligations and had been unable so to do, it was fair and equitable that the bank be allowed to proceed so as to save itself further loss. The petition was granted and the outstanding restraining order was dissolved."

From the Wright bankruptcy court reasoning:

From the opinion-order of March 11, 1939, at R. 36 to 40. R. 38 at the beginning of the paragraph at folio 63: "On the undisputed evidence the land is fairly worth $5000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such creditors as have been paid, is $5560.72." . . . R. 39, near the top of the page: "Seven years have passed since entry of the decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them." . . . R. 48, second paragraph of the Order of March 5, 1940: "because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act . . ."

It may be assumed that this Wright dismissal was made upon the authority of the Borchard dismissal as the Borchard dismissal had not yet been overruled on March 5, 1940, when this Wright case was dismissed. This Court reversed the Borchard dismissal two months later on March 20, 1940.

We submit that this order of dismissal calls for the corrective action of this court as it is essentially the Borchard dismissal over again.

The Master's Deed Is Void.

The bankruptcy court could not by its order inject validity into the void deed which was delivered by the master in the state court foreclosure case while a proceeding under Section 75 (a) to (r) was pending. The

court itself right up to the final order of March 5, 1940, considered the deed to be invalid. The subject has been presented in Note 2 pages 12-13 of this brief. This court settled the question when it decided *Kalb* v. *Feuerstein*, 308 U. S. 433.

Illinois Law of Foreclosure.

Lest it be suggested that some right was lost to the farmer debtors by the foreclosure sale it is here submitted that under Illinois law the purchaser at a foreclosure sale is entitled to a certificate of purchase but title remains in the mortgagor until the delivery of a deed to the holder of the certificate of purchase. *Lightcap* v. *Bradley*, 186 Ill. 510, 532:

> "By the decree and by the statutes the title of the mortgagor and those claiming under him would be divested and the legal title vested in defendant [the mortgagee who held the certificate of purchase], upon the execution of a deed to her."

In *Lightcap* v. *Bradley*, the mortgagee purchased the real estate at foreclosure sale and took a certificate of purchase. She then went into possession and paid the taxes for fifteen years but did not receive a deed. The mortgagor never redeemed. It was held that the mortgagee purchaser had no right whatever in the land.

Applicable Pronouncements of This Court.

Finally the following clear pronouncements of this Court are applicable to this case:

> "On failure of composition and extension, further opportunity for rehabilitation is afforded the debtor, through provisions enabling him to retain possession of his property, under conditions favorable to its ultimate redemption by him. These steps are carried out under judicial supervision, subsection (s)." *Adair* v. *Bank*, 303 U. S. 350, at page 355.

"Subsection (s) of Section 75 as amended by the Act of August 25, 1935, prescribes a definite course of procedure. That subsection applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts.". . ."He succeeded in obtaining an agreement with certain unsecured creditors for an extension but the secured creditor refused consent, as Bartels could not meet all his arrears. Bartels was thus precisely in the condition prescribed in subsection (s)." . . . "The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors (subsections (a) to (r)) and, failing this, to ask for the other relief afforded by subsection (s)." . . . "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright* v. *Vinton Branch, supra; Adair* v. *Bank of American Association*, 303 U. S. 350, 354, 357; *Wright* v. *Union Central Life Insurance Co.*, 304 U. S. 502, 516, 517." . . . "We hold that on his amended petition invoking subsection (s) Bartels was entitled to be adjudged a bankrupt and to have his proceeding for relief entertained and his property dealt with in accordance with the subsection." *John Hancock* v. *Bartels*, 308 U. S. 180, at pages 183, 184, 185, 187.

"That orderly procedure includes an application by the debtor, such as was made in the present case, for an appraisal of the property, an order that the debtor remain in possession upon terms fair and equitable to him and to secured creditors, and the entry of a stay which will assure him of his possession for three years from the date of the order, upon the conditions mentioned in the Act." . . . "For more than thirty-one months after the petition for appraisal was

filed no action was taken. An appraisal was thereafter made. No stay order has been entered fixing terms on which the debtors are to remain in possession. The petitioners were entitled to compliance with the procedure required by the statute." *Borchard* v. *California Bank*, 310 U. S. 311, at page 317.

"And to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." *Wright* v. *Union Central*, 311 U. S. 273, at page 281.

At no time were these farmer debtors given an opportunity to redeem their farm at its appraised value. They have been utterly deprived of their statutory right to invoke the procedure prescribed by Section 75 (s) under their amended petition.

Conclusion.

Wherefore your petitioners pray this court to issue a writ of certiorari to the Appellate Court.

Respectfully submitted,

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June 25, 1941

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Supreme Court of the United States.

OCTOBER TERM, 1941.

No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT, PETITIONERS,

VS.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE, RESPONDENTS.

APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS.

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REPLY BRIEF OF PETITIONERS.

This reply brief will follow the order of the brief in opposition filed by the respondents.

All emphasis is supplied unless stated otherwise.

Reply to Respondents' "Statement of the Case."

(Pages 1 to 5 of their Brief in Opposition.)

Petitioners' Right of Redemption by Special Agreement.

Thirty times in the twenty-two pages of Respondents' brief the statement is made that the petitioners' period of redemption had expired before the bankruptcy jurisdiction was invoked. The "period of redemption" thus referred to is the Illinois statutory period of redemption following sale in foreclosure which is twelve months for the mortgagor and three months additional for his creditors, or fifteen months in all. During this period the purchaser holds a certificate of purchase which may be exchanged for a deed following expiration of the statutory period.

Petitioners have a **right of redemption by special agreement** with the mortgagor, W. S. Logan, which was entered into after the foreclosure sale, while he held the certificate of purchase. The existence of this **right of redemption by special agreement** was determined by the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481. From this decision, no review was ever sought and it is the law of this case. It held that the petitioners' **right of redemption by special agreement** arose in 1933 before the twelve months statutory period expired and still existed at the date of the decision in 1937, nearly four years after the foreclosure and more than two years after the farmer debtor jurisdiction of the bankruptcy court was invoked in 1935 (R. 8, folio 6).

This decision by the Appellate Court of Illinois that the **right of redemption by special agreement** existed came about in this manner. The farmer debtors applied to the bankruptcy court on October 9, 1935 (R. 19, folio 18), for leave to continue their efforts to seek composition or extension with their creditors. In their application they set up their **right of redemption by special agreement**

with the mortgagor. (They also averred that the mortgagor, as holder of the certificate of purchase had taken a deed while proceedings under Section 75 (a) to (r) were pending. This deed was void. *Kalb* v. *Feuerstein*, 308 U. S. 433.) The bankruptcy court granted the petition and re-referred the case to the conciliation commissioner for further attempts at composition or extension (R. 22, folio 21; R. 22, folio 22; R. 23, folio 23; R. 24, folio 24; R. 25, folio 26).

Prior to this application to the bankruptcy court setting their **right of redemption by special agreement,** they had brought their suit in the state court to have this right established as is shown by the report of the conciliation commissioner on September 28, 1935, at R. 18, folio 16, where he said, "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor." This "local court" case was the one, cited in the second foregoing paragraph, which by appeal finally decided, in *Wright* v. *Logan*, 288 Ill. App. 481, that the **right of redemption by special agreement** still existed in 1937.

This **right of redemption by special agreement** was consistently recognized by the bankruptcy court which never questioned it. As late as March 11, 1939, which was more than six years after the foreclosure sale, the bankruptcy court said, at R. 39, top of page:

> "The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct." . . . "But in case this court found it necessary to order a sale, there would be a period of redemption of ninety days" . . . "The jurisdiction of this court over the deed held by petitioners [meaning the mortgage holders] and over petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property," . . . "This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale" . . .

Petitioners' Statutory Period of Redemption.

Apart from the petitioners' **right of redemption by special agreement,** which was fully recognized by the bankruptcy court at all times, the statutory redemption provisions related to this case as follows. Before the mortgagee Logan who held the foreclosure certificate of purchase became entitled to a deed, the petitioners, on May 3, 1934, filed their debtors' petition for composition or extension under Section 74 of the Bankruptcy Act. Thereupon the bankruptcy court issued a restraining order against all creditors (R. 7, folio 4). Later, on April 5, 1935, the bankruptcy court granted the petitioners leave to file as farmer debtors for agricultural composition or extension under Section 75 (a) to (r) (R. 7, folio 5). They accordingly filed their farmer debtor petition on the same date (R. 8, folio 6). By invoking Section 75 (a) to (r), subsections (n) and (o) thereof immediately became automatically operative to stay all proceedings in all other courts. *Kalb* v. *Feuerstein*, 308 U. S. 433. Thereafter, the bankruptcy court dissolved the restraining order under Section 74 (R. 7, folio 4). The order dissolving this section 74 restraining order is at R. 17, folio 14. No authority was ever sought or granted to lift the effect of Section 75 (n) and (o). Yet the foreclosure deed was delivered on June 27, 1935 (Respondents' brief in opposition, page 16, first full paragraph, second sentence). This deed, delivered while Section 75 (n) and (o) was operative, was therefore wholly void, regardless of the **right of redemption by special agreement.** *Kalb* v. *Feuerstein*, 308 U. S. 433.

Thus it is that there is no merit in the repeated statements in respondents' brief that the period of redemption had expired.

We now proceed to reply to the Respondents' "Argument" which begins at page 10 of their brief.

I.

ARGUMENT I OF RESPONDENTS.

That This Case Is Not One of Gravity or Importance.

(Page 10 of Respondents' Brief.)

If the construction and administration of Section 75 long prevailing in the Seventh Circuit, and of which this case merely exemplifies, are to prevail, the effect throughout the entire jurisdiction of the United States will be disastrous and virtually repeal Section 75 (s). Elsewhere the right of a farmer debtor to file his amended petition when the proceeding under Section 75 (a) to (r) for composition or extension is completed, and to have administration as prescribed under Section 75 (s), is recognized as guaranteed by the decision in *John Hancock* v. *Bartels*, 308 U. S. 180, in *Borchard* v. *California*, 310 U. S. 311, and in *Wright* v. *Union Central*, 311 U. S. 273.

There has grown up in the Seventh Circuit the judicial interpretation that all the farmer debtor is entitled to under Section 75 is the "equivalent" of the provisions of Section 75 (s). We will give four instances of this judicial legislation:

First example: *In re Price*, 99 F. 2d 691 (C. C. A. 7). The farmer debtor petition under Section 75 (a) to (r) for composition or extension was filed September 1, 1936, and the court made the rental and stay period of three years under Section 75 (s) to run from September 1, 1936, not from the date of the stay and rental order as Section 75 (s) (2) requires, and as stated by this court in the first paragraph of its decision in *Wright* v. *Union Central*, 311 U. S. 273.

Second example: Again in *In re Pate*, 99 F. 2d 694 (C. C. A. 7), where the farmer debtor petition under Section 75 (a) to (r) for composition or extension was filed March 15, 1935, the rental and stay order was made to run from that date instead of from the date of the order on June 25, 1937.

Third example: Again in *In re Monjon*, 11 F. 2d 535 (C. C. A. 7), decided about a year ago, the Seventh Circuit held that although the farmer debtor "has not had the advantage of the procedure prescribed by Section 75 (s)" and was entitled to file under it, yet "in view of the fact that appellant has already retained possession for over three years" the farmer debtor was denied the three year stay and the district court was directed to order an immediate sale.

Fourth example: So in this pending application for certiorari, the District Court at R. 45, folio 73, held that the farmer debtors have "engaged a moratorium far in excess of that provided" and has "been treated as being within" . . . "section 75 S." The Circuit Court, in affirming the District Court, adhered to its "equivalent" theory, saying in the last paragraph of its opinion at R. 71: "We conclude that appellants, who have heretofore had all the benefits to which they could possibly have been entitled under the provisions of Section 75 (s) without filing formal application for such benefits, are not now entitled to obtain a repetition of those same benefits by filing their petition for adjudication in bankruptcy" [under Section 75 (s)].

In the same paragraph the Circuit Court for the Seventh Circuit adhered to its companion judicial theory of a "reasonable time." The Circuit Court for the Ninth Circuit expressly disagreed in *Cohan* v. *Elder*, 118 F. 2d 850, where it answered the argument that the court was without jurisdiction to grant relief under Section 75 (s)

because the amended petition was not filed "within a reasonable time" by saying "The statute (Section 75) says nothing about a reasonable time. The act is to be construed liberally to accord the debtor the full measure of the relief afforded by Congress." The opinion then cited *Wright* v. *Union Central*, 304 U. S. 502, and said further that some time may elapse before the need for Section 75 (s) develops.

The importance of this case to the petitioners is not the measure of the judicial importance of the issue raised here. There are several millions of farm mortgages within the jurisdiction of this court. Liquidation has considerably reduced their number since Section 75 was enacted, chiefly because Section 75 has been successfully evaded upon one legal theory or another and farm debts were not adequately protected as the Congress intended. Farmer debtors ordinarily are unable to seek review of unfavorable decisions and scores of decisions which later were held to be unlawful thus became nevertheless the "law of the case." Laymen farmers can not understand this. Thousands of farm titles were lost before Section 75 (s) (Act of August 28, 1935) was held constitutional in 1937, in *Wright* v. *Vinton*, 300 U. S. 440. Many more were lost in states having statutory periods of redemption before *Wright* v. *Union Central*, 304 U. S. 502, held in 1938 that Section 75 (n) is supreme. Many more were lost on the grounds of "lack of good faith" and "inability to rehabilitate" (judicially held to be impliedly incorporated in the Act of March 3, 1933, and in the Act of August 28, 1935) before the 1938 decision in *John Hancock* v. *Bartels*, 308 U. S. 180. State courts in many cases sold farms out of Section 75 (Act of March 3, 1933) before *Kalb* v. *Feuerstein*, 308 U. S. 433, stopped them in 1940. Many more were lost along the way on the "reasonable time" and "equivalent" theories until *Borchard* v. *California*, 310 U. S. 311, was decided in 1940. Rights of redemption under Section 75 (s) (3) (Act of August

28, 1935) were lost before the decision in *Wright* v. *Union Central*, 311 U. S. 373, in 1940.

Except for the theory that the definition of a "farmer" in Section 75 was superceded by the Chandler Act, which was rejected in *Benitez* v. *Bank*, 313 U. S. 270, this summer, the last refuge for mortgage holders who would destroy the effect of Section 75 would seem to be these "equivalent" and "reasonable time" theories. Notwithstanding this court's eleven unanimous decisions that Section 75 must be administered according to the "mandate of the statute" and its "definite course of procedure" the persistent fault-finding mortgage holders have so far succeeded in thwarting the law. It should be frankly stated that this sorry state of affairs is not primarily due to the fault of the courts but to the misfortune of individual farmer debtors who are unable to secure legal services for the defense of their law. On the other side, the extensive legal staffs of large corporate mortgage holders having mortgages all over the country have been able to secure favorable decisions in one court or another. They have never been able to be so successful where mortgages come within the moratorium statutes relating to corporations (Section 77B), railroads (Section 77), or to municipalities (Section 81 *et seq.*). When confronted with those laws they submit to the evident purposes embodied in the legislation of the Congress made pursuant to the bankruptcy power of the Constitution.

Nor is the importance of Section 75 to be measured by the number of cases filed under it. For every farmer who invokes it, there are hundreds of others who need not file if it is effective. Mortgage holders respect or disregard it in the measure of its effectiveness.

II.

ARGUMENT II OF RESPONDENTS.

That the Bankruptcy Court Had No Jurisdiction Because the Debtors Had No Right of Redemption.

(Pages 11 to 16 of Respondents' Brief.)

This subject has been discussed at pages 2 to 3 of this brief under the heading "Reply to Respondents' 'Statement of the Case'", and will not be reverted to here.

Some unwarranted reliance upon cited cases should be mentioned however:

Buttars v. *Utah*, 116 F. 2d 622 (C. C. A. 10) (Pages 11 and 12 of Respondents' brief). (1) The opinion recognized that a former order of October 9 was invalid in fixing an arbitrary sixty day redemption period but held that since there was no appeal it became the "law of the case." (2) The holding that the force of Section 75 (n) and (o) is spent in the interim between Section 75 (a) to (r) and Section 75 (s) and therefore foreclosure may then be accomplished is in conflict with the decisions of other jurisdictions. For example *Schriever* v. *Oxford*, 116 F. 2d 684 (C. C. A. 6), decided six months later, held that by authority of *John Hancock* v. *Bartels*, 308 U. S. 180, Section 75 (n) and (o) must be interpreted so to preserve the opportunity to administer the procedure under Section 75 (s).

It should also be especially noted that *Buttars* v. *Utah* misquotes Section 75 (n). According to that opinion (in the second from the last paragraph) Section 75 (n) extends the right of redemption necessary "for the purposes of carrying out the provisions of the **act** that is to afford the debtor an opportunity to work out a composition or

extension of his debts" under Section 75 (a) to (r). The statute does not confine Section 75 (n) to the Act but to the entire Section 75. It says that Section 75 (n) shall be extended "for the period necessary for the purpose of carrying out the provisions of this **Section**" which includes Section 75 (s). The exclusive jurisdiction of the bankruptcy court under Section 75 (n) is unlimited for all the purposes of Section 75 (that is Section 75 (a) to (r) and Section 75 (s)) not merely for a part of it.

In re Cresap, 99 F. 2d 772 (C. C. A. 7) (page 12 of respondents' brief). The Seventh Circuit held (1) that the petitioner had never been a farmer but was a railroad man and never lived on a farm. This settled the matter. But the decision went further and held (2) that he had "no hope of rehabilitation." The District Court had dismissed the case under authority of the Seventh Circuit's *Lowmon* and *Wright* v. *Union Central* decisions which held that the statutory right of redemption was not affected by Section 75. When these decisions were overruled by this court in *Wright* v. *Union Central*, 304 U. S. 502, the Circuit Court reverted to the "farmer" and "rehabilitation" questions which had not theretofore entered the case. Later this court overruled the "rehabilitation" theory in *John Hancock* v. *Bartels*, 308 U. S. 180. The Cresap decision is now repudiated except for the holding that the petitioner was not and never was a "farmer."

Bernards v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) (page 12 of respondents' brief), is now pending in this court. All proceedings in controversy occurred under Section 75 (s) (the original Act of June 28, 1934, or the present Act of August 28, 1935). There was no **right of redemption by special agreement** as in this case but the statutory right of redemption expired normally, except as tolled by Section 75. "Good faith" and "rehabilitation" were issues there but not here.

As to *Schreiner* v. *Farmers*, 91 F. 2d 606 (C. C. A. 3), the case arose in Pennsylvania where there is no right of redemption and title passes immediately upon sale in foreclosure even before a deed is acknowledged. The court specifically so held. The sale was held while no farmer debtor proceeding was pending.

The decision of *In re Davis*, 22 Fed. Supp. 12, is most ineptly quoted and cited by the respondents. The quotation at the foot of page 13 and the top of page 14 of their brief in opposition is neither correct nor complete. It omits the following sentence: **"This court's original thought, as expressed in In re Duffy and In re Raymond, 9 Fed. Supp. 166, can not prevail in view of the later decisions of the Circuit Court of Appeals [seventh Circuit] in the two cases mentioned."** The "original thought" of the district judge (in the *Duffy and Raymond* opinion) was exactly contrary to the opinion he was announcing in the *Davis* case. The "two cases mentioned" were (1) the *Lowmon case*, (C. C. A. 7) 79 F. 2d 887, and (2) *Wright* v. *Union Central*; (C. C. A. 7) 91 F. 2d 894, both of which were later overruled by this court, the first in *Wright* v. *Vinton*, 300 U. S. 440 (where it was specifically mentioned in the first paragraph), and the second in *Wright* v. *Union Central*, 304 U. S. 502, which reversed it.

The district judge originally held that before delivery of deed to the holder of the certificate of purchase the mortgagor still had his right of redemption under Illinois law. He, however, felt bound by the *Lowmon* and *Wright* v. *Union Central* decisions of the Seventh Circuit. This court later held with the district judge and against the Seventh Circuit, and so destroyed the district judge's decision in the *Davis* case and upheld his "original thought" in his *Duffy and Raymond* decision.

We must repeat (from pages 16 and 17 of the petitioners' brief in support of their petition herein) that *Wright*

v. *Logan*, 75 F. 2d 687, **did not** decide anything concerning an oral agreement for redemption. It held **only** that under Section 75 creditors must **consent in writing** to the debtors' proposal. This argument was also presented by the respondents (appellees there) in the appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. 481, and utterly rejected. That court found that the petitioners **had** a **right of redemption by special agreement** long after the farmer debtor jurisdiction of the federal court was invoked. This has been discussed at pages 17 and 18 of the petitioners' brief and at pages 2 and 3 of this brief.

The foregoing discussion of the *Davis* decision, 22 Fed. Supp. 12, brings us to the *Lightcap* and *Bradley* cases cited at page 15 of the respondents' brief. They are:

(1) *Lightcap* v. *Bradley*, 186 Ill. 510.

(2) *Bradley* v. *Lightcap*, 195 U. S. 1.

(3) *Bradley* v. *Lightcap*, 195 U. S. 24.

(1) It was this leading Illinois case of *Lightcap* v. *Bradley*, 186 Ill. 510, and subsequent cases, which were the basis of the district Judge Lindley's "original thought" in his *Duffy and Raymond* decision in 9 Fed. Supp. 166, which was ultimately sustained by this court in *Wright* v. *Vinton*, 300 U. S. 440, and in *Wright* v. *Union Central*, 304 U. S. 502. Thus Judge Lindley's "original thought" was reinstated as law by this court and his *Davis* opinion overruled as he thought it should be. Yet respondents assert that *Lightcap* v. *Bradley* was reversed by this court. They quickly pass on. We will stop to elucidate and show that the present authority of *Lightcap* v. *Bradley* is not tarnished. The two cases supposed to overthrow *Lightcap* v. *Bradley* are:

(2) *Bradley* v. *Lightcap*, 195 U. S. 1, and

(3) *Bradley* v. *Lightcap*, 195 U. S. 24.

As to these decisions, it need only be said that they did not reverse *Lightcap* v. *Bradley,* 186 Ill. 510, except in two respects which do not affect its authority here. (1) The then recently enacted Illinois statute as applied to the facts of that case then before this court in 1904 was held unconstitutional (1) because it was retroactive, having been enacted **after** the execution of the mortgage and (2) because the **mortgagee was in actual possession** before foreclosure and before the statute took effect. Thus it is seen that, where these two facts do not exist, *Lightcap* v. *Bradley,* 186 Ill. 510, is the law of Illinois exactly as Judge Lindley said it was in his *Duffy and Raymond* decision in 9 Fed. Supp. 166, and as sustained by this court. As (1) the Illinois statute was not enacted after the execution of the mortgage and (2) the mortgagee has never been in possession in this *Wright* case the two decisions of this court in *Bradley* v. *Lightcap* are of no moment whatever.

III.

ARGUMENT III OF RESPONDENTS.

That the Bankruptcy Court Did Not Base Its Dismissal Solely on the "Equivalent" Theory.

(Page 17 of Respondents' Brief.)

It is not true to say that "petitioners delayed five years after being ordered to file under Sub-Section S before doing so." The time element in this case very closely parallels that in *Borchard* v. *California,* 310 U. S. 311, as shown at pages 22 and 23 of petitioners' brief herein. There is but six months difference. Let us look at the record.

R. 19, folio 17, September 13, 1935. Order to file amended petition under Section 75 (s) by October 10, 1935, or be dismissed.

R. 18, folio 16, September 18, 1935. Report of conciliation commissioner stating "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor."

R. 19, folio 18, October 9, 1935, petitioners apply for leave to continue attempts to obtain composition or extension under Section 75 (a) to (r) with mortgagee Logan, setting out their **right of redemption by special agreement.**

R. 22, folio 21, October 14, 1935. Formal order approving petitioners' application to proceed further for composition or extension under Section 75 (a) to (r).

R. 22, folio 22, October 14, 1935. "And it further appearing to the court that said debtors have not had sufficient opportunity to submit a proposal of composition or extension" this order referred the case to the conciliation commissioner for "proceedings as provided under subsection (g) of Section 75 as amended."

R. 25, folio 26, November 12, 1935. Order of Re-reference because of interest of former conciliation commissioner (See R. 24, folio 24).

R. 42, entry of January 4, 1936. Petition of creditors requesting foreclosure in Edgar County be enjoined. Notice by conciliation commissioner to that court. *Wright v. Logan* (not reported) (date not shown).

Decree of Circuit Court of Edgar County, Illinois (date not given), denying **right of redemption by special agreement.**

Wright v. *Logan*, 364 Ill. 33. June 17, 1936. Appeal from the Circuit Court of Edgar County, Illinois, to the Supreme Court of Illinois. Decision of that court holding the subject matter was within the sole jurisdiction of the Appellate Court of Illinois because the sole question was the **right of redemption by special agreement**, and transferring the appeal to the Appellate Court.

Wright v. *Logan*, 288 Ill. App. 481. January 15, 1937. Decision that petitioners had the **right of redemption by special agreement.**

R. 26, folio 43, January 14, 1939. Petition to district judge by heirs of mortgagee seeking an order for

(1) A report by the conciliation commissioner;

(2) Leave to go into possession;

(3) In the alternative that the bankruptcy court find amount due on mortgage and fix time for payment by debtors and upon failure to pay the amount to order surrender of possession.

R. 36, folio 60, at page 39, folio 64, March 11, 1939. Order of bankruptcy court showing that petitioners had been paying rent in State Court. Order that jurisdiction of the court be retained; that the farmer debtors remain in possession; that they pay rental (case was under Section 75 (a) to (r) not under Section 75 (s)); that case be continued 120 days; that rehabilitation be completed in 129 days; that otherwise full force and effect would then be given to the deed (which deed was void because delivered while the case pended under Section 75 (a) to (r)).

R. 41, folio 66, January 6, 1940. Order (1) Setting matter for final hearing on January 12, 1940, and (2) that conciliation commissioner file his report.

R. 41, folio 28, January 12, 1940. Report of conciliation commissioner, showing that in addition to rent, petitioners had paid in state court (R. 37, folio 62) he held $450 as rental paid by the petitioners on the 40 acres in the Logan mortgage (R. 26, folio 43) and that debtors reported taxes paid. Also reporting all creditors paid except $38 and the Logan mortgage. Also relating continuing attempts and negotiations for the redemption of the Logan mortgage.

At R. 43 of this report, the conciliation commissioner reported the attempts at raising money to settle the Logan mortgage and recommending: "I feel that she [Mrs.

Wright] should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

R. 5, entries of March 2, 1940. "Case set for hearing, Monday, March 4th at 10 A. M."

"File amended debtors' petition in proceedings under Section 75, sub. Sec. S."

R. 5, entry of March 4, 1940. "Hearing before court in matter of possession by mortgagor and allowing debtor to amend petition for adjudication under 75 S." "Evidence heard and matter taken under advisement."

R. 6, entry of March 5, 1940. Memorandum of order which was the subject of appeal and is the subject of this petition for certiorari.

The only order to file under Section 75 (s) was that of R. 19, folio 17, which was abrogated by the bankruptcy court in its order at R. 22, folio 21. At R. 22, folio 22. At R. 23, folio 23, and at R. 25, folio 26, re-referring the farmer debtor proceedings to the conciliation commissioner for further attempts at composition or extension. It is true the petitioners asked leave to remain under Section 75 (a) to (r) for composition or extension at R. 19, folio 18, and the court granted it at R. 22, folio 22, and the conciliation commissioner, to whom the proceeding was re-referred, recommended, at R. 43, further attempts at composition or extension on January 11, 1940. He never made any other report to the bankruptcy court than this one of January 11, 1940, filed January 12, 1940, at R. 41, folio 28. Every delay was by the express authority of the judge and it was expressly approved and its continuance recommended by the conciliation commissioner of the bankruptcy court. The respondents as mortgage holders stood aside, and participated in the negotiations, until 1939, when they, evidently relying upon the peculiar "equivalent" and "reasonable" time theories

of the Seventh Circuit, applied to the district court to wreck the proceedings by ordering immediate redemption of the mortgage or surrender of possession by cutting out Section 75 (s) completely. The farmer debtors had a right to rely upon the integrity of the proceedings.

If it is to be finally held that the court may by its express orders keep jurisdiction of a farmer debtor proceeding under Section 75 (a) to (r) without final report until it concludes that the debtor has already had the "equivalent" under Section 75 (a) to (r) to those under Section 75 (s), the statute has been wrecked by judicial legislation. The intent of the Congress and the purpose of the law are thereby thwarted. No appraisal or set time for redemption as prescribed by Section 75 (s) is then ever afforded to the farmer debtor. Section 75 (s) prescribes in detail how, when, and in what sum, the farmer debtor shall redeem under it. He knows exactly how to proceed if the "orderly procedure" and "mandate" of Section 75 (s) is observed. If the "equivalent" and "reasonable time" theories prevail, he can know nothing but bewilderment. The mortgage holders had the opportunity to ask for a show cause order and the bankruptcy court could at any time have issued such an order thus precipitating the proceeding into Section 75 (s). Neither acted until 1939 when the application of the mortgagees was filed. They had no right to ask for more than that Section 75 (s) be invoked or the proceeding dismissed.

As in *Borchard* v. *California Bank*, 310 U. S. 311, instead of prosecuting the cause pursuant to statute, other procedure was resorted to. Quoting from that decision at page 318:

> **"The petitioners were entitled to compliance with the procedure required by statute. The bank [the mortgagee], at any time, could have obtained action by the conciliation commissioner and the court, in accordance with the statute. It can not now maintain that the disorderly and unauthorized procedure**

followed by the parties is the equivalent of that prescribed by the statute and that, as the petitioners have not been able to rehabilitate themselves, it is entitled to enforce its liens."

As stated above the time consumed in the Borchard case was about the same as in this instant case.

The mortgagees participated for two years in litigation to determine the right of redemption by special agreement. They stood by for two more years participating in negotiations for composition, allowing debtors to pay taxes, and rental, and to attempt to raise funds for redemption which they refused to accept. Having permitted the court, the conciliation commissioner and the debtors to proceed in good faith without objection, they are estopped to attempt to change their position by suddenly requiring surrender of possession or payment of the mortgage contrary to Section 75 (s) without appraisal to fix the amount of payment and the right of redemption before and after sale.

The situation is also somewhat similar to that in *Paradise* v. *Federal*, 118 F. 2d 215 (C. C. A. 10), decided this year, where the bankruptcy court failed to issue a formal stay order under Section 75 (s) until August 7, 1940, when it ordered a *nunc pro tunc* stay from September 8, 1938. The Tenth Circuit Court of Appeals held that the stay order was vital and could not be made retroactive.

The delays or neglect of the court may not be visited upon the head of the trusting farmer debtor, who is under the exclusive jurisdiction of the court, so as to take from him the right which is his by mandate of statute. "Reasonable time" and "equivalent" are not terms of the statute. Only the statute itself can give the farmer debtor its equivalent. It would be as consistent to say that because, after hearing, a matter remains "in the bosom of the court" for years, the right of review is thereby lost by the time a final order is entered.

IV.

ARGUMENT IV OF RESPONDENTS.

That the Petition Presents No Importaht Jurisdiction Question.

(Page 18 of Respondents' Brief.)

We must observe, anent paragraph (6) at the bottom of page 18, that there is no evidence whatever of any "voluntary offer to surrender title" except at R. 48, folio 73. Such an offer, yea, even a solemn form of contract embodied in a court order approved by the parties not to invoke the judicial process, is void as against public policy. No one may contract away his access to the courts. In a farmer debtor case where there was such a formal court order so approved by the parties, it was held to be void. *Trego* v. *Wright*, 111 F. 2d 990 (C. C. A. 6), relying upon *Guaranty* v. *Green*, 139 U. S. 137, and *Mutual* v. *Cleveland*, 82 Fed. 508.

V.

ARGUMENT V OF RESPONDENTS.

That the Decision Is Not in Conflict.

(Pages 19 to 20 of Respondents' Brief.)

As this argument is predicated solely upon the assumption that the right of redemption does not exist, we say nothing of it except that it has been discussed at pages 2 to 3 of this brief, under the respondents' "Statement of Facts," and that the decision below is squarely conflicting with all the decisions named in the brief of the petitioners' petition for certiorari at pages 5, 6 and 7.

VI.

ARGUMENT VI OF RESPONDENTS.

That a Petition under Section 75 Must Be Filed in a "Reasonable Time."

(Page 21 of Respondents' Brief.)

As we have discussed this subject at pages 12 to 19 of this brief, and the cases cited have been discussed as indicated below, we do not do so here.

For the *Price* case, see page 5.

For the *Pate* case, see page 6.

For the *Buttars* v. *Utah* case, see page 9.

CONCLUSION.

We think this case presents an urgent situation requiring the corrective attention of this court. The decisions below are contrary to the spirit of all the eleven unanimous decisions of this court and particularly to those of *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California*, 310 U. S. 311; and *Kalb* v. *Feuerstein*, 308 U. S. 433.

The decisions below are in direct conflict with the decisions in the Seventh Circuit whose decisions are cited at page 6 of the petitioners' brief. Particularly it is in conflict with *Cohan* v. *Elder*, 118 F. 2d 850 (C. C. A. 9), to which certiorari was denied by this court, and also in conflict with those of the several district courts cited at pages 6 and 7 of petitioners' brief.

The questions involved concern many hundreds of thousands of farm mortgages.

The petitioners therefore pray that their petition for certiorari may be granted.

Respectfully submitted,

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September 13, 1941.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
PETITIONERS,
VS.
GUSTA LOGAN, HARRIET LOGAN SAWYER AND
EXIA LOGAN REESE, RESPONDENTS.

ON
WRIT OF CERTIORARI
TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.
CERTIORARI GRANTED OCTOBER 15, 1941.

BRIEF

**On Behalf of the Petitioners,
Elizabeth Wright and Charles C. Wright.**

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Supreme Court of the United States

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No. 229.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
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VS.

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ON
WRIT OF CERTIORARI
TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.
CERTIORARI GRANTED OCTOBER 15, 1941.

BRIEF

**On Behalf of the Petitioners,
Elizabeth Wright and Charles C. Wright.**

Note: All emphasis in this brief is supplied unless otherwise noted.

OPINIONS BELOW.

In the District Court.

The opinions of the District Court were not published. They are found in the Record at R. 36, f. 60; R. 41, f. 66; R. 44, f. 68, and R. 48, f. 73.

In the Circuit Court of Appeals.

The opinion below in the Seventh Circuit is reported as *Wright* v. *Logan,* 119 F. 2d 354, and it appears at R. 68 to 71.

JURISDICTION.

Certiorari was granted October 15, 1941, jurisdiction being invoked under Section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a).

STATEMENT OF THE CASE.

1. The respondents are the heirs and successors in interest of the original mortgage holder, William S. Logan, now deceased.

2. Following a foreclosure decree in the state court the farm of the petitioners was sold and a certificate of purchase was issued to the mortgage holder Logan (R. 26, f. 43; R. 20, f. 19; R. 27, f. 44).

3. The petitioners originally filed a petition as individual debtors under Section 74 of the Bankruptcy Act. This petition was pending from May 3, 1934, to April 5,

1935 (R. 2, entries of May 3, 1934, to April 5, 1935). The bankruptcy court vacated the reference under Section 74 and granted leave to file a petition as farmer debtors (R. 2, four entries of April 5, 1935. R. 7, f. 5; R. 8, f. 6).

4. The farmer debtors' petition was filed April 5, 1935, under Section 75 (a) to (r) and it was referred to a conciliation commissioner (R. 8, f. 6; R. 2, entries of April 5, 1935). They then had by state law a right of redemption by contract with Logan, the mortgage holder. *Wright* v. *Logan*, 288 Ill. App. 481.

5. The conciliation commissioner made his final report (R. 18, f. 16) stating that there was a "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor" (This "case" upon appeal was the decision in *Wright* v. *Logan*, 288 Ill. App. 481, which has just been referred to in the preceding paragraph 3). The conciliation commissioner also stated that the farmer debtors claimed the proceeding was not affected by the decision that the original Frazier-Lemke Law was unconstitutional (Act of June 28, 1934, original Section 75 (s)).

6. The farmer debtors later applied for leave to continue further under Section 75 (a) to (r) to work out a composition or an extension with the mortgage holder Logan (R. 19, f. 18). The application was granted (R. 22, f. 21), and the case was referred back to the conciliation commissioner "for such proceedings as provided under subsection (g) of Section 75 as amended" (R. 23, f. 23). Because the conciliation commissioner was disqualified the reference was vacated and the case was finally referred to Conciliation Commissioner Solon to proceed under Section 75 (a) to (r) for composition or extension (R. 24, f. 24; R. 25, f. 26).

7. While the proceeding was pending before the conciliation commissioner the case in the state courts (re-

ferred to in paragraphs 4 and 5) to determine whether a right of redemption existed was finally decided in *Wright v. Logan*, 288 Ill. App. 481, on January 15, 1937. It was held that the farmer debtors had by contract with the mortgage holder, Logan, the right of redemption. This was long after the farmer debtor petition (R. 8, f. 6), was filed on April 5, 1935.

8. Following the decision of the state court, negotiations for composition or extension proceeded under the reference to the conciliation commissioner. The farmer debtors submitted a formal proposal. Report of Conciliation Commissioner Solon (R. 41 to 43; R. 42, just preceding folio 29).

9. The farmer debtors made numerous efforts to obtain a loan through private agencies and through the State Farm Adjustment Supervisor under the federal Farm Security Administration. The conciliation commissioner reported funds were in sight, with other available funds, sufficient to pay off the Logan mortgage (R. 43). Settlement of practically all debts except the Logan claim was achieved (R. 43, middle of the page). There was more than enough money to pay the Logan mortgage but Logan refused to sign the necessary papers (R. 21, preceding f. 20).

10. The district judge ordered the farmer debtors to pay rent and they paid rent and taxes (R. 4, entry of March 11, 1939, R. 42 and 43, entries of March 21, 1939, March 28, 1939, July 19, 1939, and next to last paragraph on page 43).

11. While the proceeding was pending the master's deed in foreclosure was, without compliance with Section 75 (o), unlawfully delivered to the mortgagee, Logan. The bankruptcy court considered this masters deed to be void. The facts and references to the record relating

to this deed are given in the note below.[1] It was not until March 5, 1940, that the bankruptcy court ordered (in the final order appealed from) that "the deed heretofore issued by the master in chancery be given full force and effect" (R. 48). This order was ineffective because the deed was a nullity. *Kalb v. Feuerstein*, 308 U. S. 433.

12. On January 4, 1939, the heirs of Logan, the mortgage holder, filed their petition in the bankruptcy court that resulted in the final order (R. 48) which is the subject of this petition for certiorari. This petition is found at R. 26 to 30. It prayed:

---

[1]There is in the record an "Order Dissolving Injunction" (R. 17, f. 14). This order referred to a previous order **under Section 74** which was entered May 3, 1934, eleven months before the petition under Section 75 was filed (R. 7, f. 4. R. 8, f. 6). It had no relation to proceedings under Section 75. The bankruptcy court fully recognized that the mortgage remained subject to the farmer debtor proceedings notwithstanding the unlawful delivery of the master's deed as is shown by the following:

On March 11, 1939, the district judge said:

"The deed held by the mortgagees has been retained in their possession under order of this court directing that **it shall not be recorded or given any effect** until and unless this court shall so direct" (R. 39, top of page).

"Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood" (R. 39, last sentence of paragraph which continues over from page 38).

"The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, **there would be a period of redemption** of 90 days" (R. 39, the beginning of the first whole paragraph on the page).

"Accordingly it is the order of the court that **the jurisdiction of this court over the deed** held by the petitioners **and over the petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property. . . .**" (R. 39, beginning at f. 64).

"This matter will be continued for a period of 120 days from this date. During that time **debtors shall have every opportunity to redeem from the mortgage sale** and to make any and all possible adjustments and composition with their creditors" (R. 39, bottom of page).

(1) That the conciliation commissioner be ordered to make a report; (2) That the heirs of the mortgagee be permitted to take possession; (3) Or, in the alternative, that the court fix a sum at which the farmer debtors must redeem. The prayer of this petition is at the bottom of R. 29, and at the top of R. 30.

13. On March 9, 1939, the bankruptcy court heard the petition of the mortgage holders "to determine equity to be done" and ordered the parties to submit a stipulation as to the amount due (R. 4, entry of March 9, 1939).

14. On March 11, 1939, the stipulation was filed that the amount due on the mortgage was $5,560.72 (R. 40). The bankruptcy court also issued an opinion-order (R. 36 to 40), which provided that:

> (1) The farmer debtors should pay rent for past and future (R. 39, f. 64); (2) The cause was continued for 120 days within which the farmer debtors must settle with their creditors (R. 39, bottom of page).

This order was of course invalid because the statute contains no authority for ordering rent to be paid by a farmer debtor while his case is pending as this one was under Section 75 (a) to (r).

15. On January 6, 1940, the bankruptcy court further continued the matter to January 12, and ordered the conciliation commissioner to "file a current report to date," and the conciliation commissioner complied. He concluded his report by saying:

> "I know that Mrs. Wright has been granted a large number of continuances in the above matter for the purpose of effecting the redemption which she is now trying to make, but I feel that **she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined.** Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.

Your Commissioner further respectfully reports that he now has on hand the sum of $450 which are rental receipts from Elizabeth Wright" (R. 41, at 43).

16. The court further continued the case to March 1, by which date the farmer debtors were ordered to pay the full amount of the judgment debt with interest or surrender possession (R. 5, second entry of January 12, 1940, R. 44).

17. On March 2, 1940, the matter was set for hearing on March 4, 1940 (R. 5, first entry of March 2, 1940). On the same day the farmer debtors filed their amended petition under Section 75 (s) (R. 5, third entry of March 2, 1940).

18. On March 4, 1940, the matter was further heard and taken under advisement (R. 5, entry of March 4, 1940).

19. On March 5, the final order of the bankruptcy court was entered (R. 48). The appeal and this petition for certiorari stem from this final order.

Chronological Table of Events in State and Bankruptcy Courts.

The following chronological table shows the actions of the state and bankruptcy courts. The actions of the state courts are referred to in indented paragraphs.

December 17, 1932	In state court: Decree of Foreclosure (R. 26, f. 43).
February 3, 1933	In state court: Sale in Foreclosure. Certificate of Purchase (R. 20, f. 19; R. 27, f. 44).
May 3, 1934	In bankruptcy court: Petition under Section 74 filed, and referred to referee. R. 2, Date "5-3-34." Restraining order under Section 74, restraining all steps against debtors (R. 7, f. 4).

March 29, 1935 — C. C. A. 7 holds that under Section 74 consent to proposal must be in writing. *Wright* v. *Logan*, 75 F. 2d 687. Discussed at page 14 of this brief.

April 5, 1935 — In bankruptcy court: Petition for leave to file under Section 75. Granted, and petition approved under Section 75 (R. 7, f. 5; R. 8, f. 6, to R. 17, f. 13) and referred to conciliation commissioner.

May 17, 1936 — In bankruptcy court: Report of conciliation commissioner asking for instructions on mortgage holder's motion to dismiss (R. 18, f. 15, paragraph 4).

June 11, 1935 — In bankruptcy court: Injunction under Section 74 (R. 7, f. 4) dissolved (R. 3, f. 1). Date "6-11-35."

July 27, 1935 — In state court: Master's deed dated and delivered to Logan. (Date given in respondents' brief in opposition to Petition for Certiorari, page 16, first full paragraph.) Note: Anent this deed the Judge of the district court said at R. 39 (top of page) on March 11, 1939: "The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct."

September 28, 1935 — In bankruptcy court: Report of conciliation commissioner (R. 18, f. 16) showing:

Case pending in state court on question of right to redeem. Farmer debtors claim *Louis-*

ville v. *Radford* decision does not affect this case as it is not pending under Section 75 (s) but under Section 75 (a) to (r).

September 30, 1935 — In bankruptcy court: Order to amend to Section 75 (s) or show cause within ten days (R. 19, f. 17).

October 9, 1935 — In bankruptcy court: "Amended debtors' petition" (R. 19, f. 18).

NOTE: This was not a petition under Section 75 (s) but for leave to continue further under Section 75 (a) to (r), which was granted in the following entry.

October 14, 1935 — In bankruptcy court: Case retained under Section 75 (a) to (r) and referred to conciliation Commissioner Gross (R. 22, f. 21 and f. 22; R. 23, f. 23).

November 9, 1935 — In bankruptcy court: Reference to Conciliation Commissioner Solon (R. 25, f. 26).

June 17, 1936 — In state court: Decision of Supreme Court of Illinois transferring appeal to Appellate Division because: "The only controversy between the parties was as to the right of redemption." 364 Ill. 33.

January 15, 1937 — In state court: Decree of Appellate Court of Illinois that Debtors had right of redemption. *Wright* v. *Logan*, 288 Ill. App. 481. R. 31, f. 50.

January 4, 1939 — In bankruptcy court: Petition of Logan heirs to dismiss farmer debtor proceedings (R. 26, f. 43).

February 27, 1939	In bankruptcy court: Debtors' answer to Logan Heirs' petition (R. 34, f. 56).
March 9, 1939	In bankruptcy court: Order to debtors and Logan heirs to stipulate amount due (R. 4), entry March 9, 1939.
March 11, 1939	In bankruptcy court: Stipulation between Logan heirs and Wrights showing debt $5,169.50 plus $300 and interest (R. 40, f. 27).
March 11, 1939	In bankruptcy court: Order: 1. Land worth $5,000, debt $5,560.72. 2. Jurisdiction over master's deed retained. 3. Debtors to remain in possession. 4. To pay rental. 5. Continued to 120 days to redeem at amount of mortgage debt (R. 36, f. 60).
July 11, 1939	In bankruptcy court: Time extended 30 days. R. 5, entry July 11, 1939.
August 11, 1939	In bankruptcy court: Time extended 60 days. R. 5, entry August 11, 1939.
January 6, 1940	In bankruptcy court: Hearing set for January 12, 1940. Conciliation commissioner ordered to file current report (R. 41, f. 66).
January 12, 1940	In bankruptcy court: Report of Conciliation Commissioner Solon: 1. Asking for additional time to accomplish plan. 2. Reporting taxes paid and $450 on hand (R. 41, f. 28).
January 12, 1940	In bankruptcy court: Order for possession or pay mortgage debt (R. 44, f. 68).

March 2, 1940 — In bankruptcy court: Hearing set for March 4, 1940. R. 5, entry March 2, 1940.

March 2, 1940 — In bankruptcy court: Amended petition Section 75 (s) filed (R. 47, f. 70). See R. 5, entry "Mch 2-40."

March 4, 1940 — In bankruptcy court: Hearing:

1. On right of possession.
2. On right to file Section 75 (s).

See R. 5, bottom of page, entry dated "Mch 4-40."

March 5, 1940 — In bankruptcy court: Final order:

1. Amended petition Section 75 (s) denied.
2. Restrictions on mortgage holders lifted.
3. Master's deed given full effect.
4. Possession to be surrendered.
5. Farmer debtors' case dismissed.

R. 48, f. 73. R. 6, top of page date "Mch 5."

SPECIFICATION OF ERRORS.

1.

The bankruptcy court could not deny to the farmer debtors the right to file their amended petition under Section 75 (s) upon their failure to achieve composition or extension under Section 75 (a) to (r).

2.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file their application for leave to file an amended petition under section 75 (s).

3.

The bankruptcy court could not dismiss the farmer debtor proceeding while the farmer debtors had on file, or were tendering for filing, their amended petition under Section 75 (s).

4.

The bankruptcy court could not give force and effect to a deed delivered in violation of Section 75 (o).

5.

The bankruptcy court could not authorize the mortgage holders to exercise rights as grantees under a deed delivered in violation of Section 75 (o).

6.

The bankruptcy court could not require the farmer debtors to surrender possession of their real estate security while their application for the benefits of Section 75 (s) was pending.

7.

The bankruptcy court could not require the farmer debtors to redeem their mortgaged security while proceedings were pending under Section 75 (a) to (r).

8.

The bankruptcy court could not fix the valuation for purposes of redemption by ordering the parties to stipulate the amount due.

9.

The bankruptcy court could not require the farmer debtors to redeem their mortgaged security by paying the amount for which it sold at a state foreclosure sale.

SUMMARY OF THE ARGUMENT.

The order of the District Court denying the amended petition, lifting all restrictions from the mortgage holders, ordering the real estate to be surrendered, giving effect to the master's deed, and dismissing the proceedings was erroneous, and unlawfully deprived the appellants of the benefits of Section 75 (s):

ARGUMENT.

Preliminary Statement.

Some inaccurate statements appear in the record. It is desired to correct them lest they interfere with a proper understanding of the facts.

1.

It is said in the opinion-order of the bankruptcy court (R. 36 to 40), at R. 36, f. 60, near the bottom of the page and at the top of R. 37, that it had been held, and the United States Circuit Court of Appeals in *Wright* v. *Logan*, 75 F. 2d 685, had affirmed a holding that the farmer debtors had no interest or right in their farm when they filed a petition under Section 74, which preceded the filing under Section 75. The opinion of the Circuit Court disproves this statement. The only issue and the only point decided was that under Section 74 creditors must **consent in writing** to a proposal before the court can confirm it. **The debtors' right in the property was not involved.** We quote in support of this statement the last paragraph of the opinion of the Circuit Court of Appeals:

> "However liberally we are disposed to construe Section 74 with a view of according to debtors the full scope of the relief thereby contemplated, we are not at liberty to ignore its specific requirement that a majority of creditors in amount as well as in number must **consent in writing** to such proposed extension before the bankruptcy court may confirm it." *Wright* v. *Logan*, 75 F. 2d 687.

It is quite clear that the United States Circuit Court of Appeals did not decide anything concerning the debtors' right in the property.

The mortgage holder strenuously argued in the state courts the same contention, that the federal circuit court had decided there was no right of redemption and that the question was *res judicata*. But on January 15, 1937, which was **more than two and a half years after the petition under Section 74 was filed and more than one and a half years after the petition under Section 75 was filed, the Appellate court of Illinois decided that the debtors then still had the right of redemption** by an agreement, with the mortgage holder Logan. This decision, reported as *Wright* v. *Logan*, 288 Ill. App. 481, January 15, 1937, after first finding that the United States Circuit Court of Appeals **had not** made any holding concerning the debtors' interest in the property, then proceeded to decide that they had a right of redemption by agreement with Logan, the mortgage holder, independent of the state statutory period for redemption. The opinion of the state court upon this subject is printed in the Appendix to this brief at page 35.

The bankruptcy court itself never doubted its complete jurisdiction over the mortgaged security. Indeed, it specifically asserted its jurisdiction several times. The following quotations are from various statements made by the judge of the bankruptcy court. (They have been more fully quoted upon another subject in Note 1 at page 5 of this brief.)

> "The deed held by the mortgagees has been retained in their possession under order of this court directing that **it shall not be recorded or given any effect** until and unless this court shall so direct" (R. 39, top of page).
>
> "But in case this court found it necessary to order a sale, **there would be a period of redemption** of 90 days" (R. 39, the beginning of the first whole paragraph of the page).
>
> "Accordingly it is the order of the court that **the jurisdiction of this court over the deed held by the petitioners and over the petitioners be and the same**

is hereby retained; that the debtors remain in possession and custody of the property, . . ." (R. 39, beginning at f. 64).

". . . **debtors shall have every opportunity to redeem** from the mortgage sale and to make any and all possible adjustments and composition with their creditors" (R. 9, bottom of page).

2.

In the opinion-order of March 11, 1939 (R. 36 to 40), it is further said, at R. 37, f. 61, that "Upon expiration of the period of redemption of 15 months, the master-in-chancery executed and delivered to Logan a deed for the read estate." This deed is void because it was executed and delivered while the petition under Section 75 (a) to (r) was pending, and was in violation of Section 75 (o). *Kalb* v. *Feuerstein*, 308 U. S. 433. The bankruptcy court at all times recognized the nullity of this deed and held the deed and the real estate to be subject to the jurisdiction of the bankruptcy court. This has been discussed at page 5 of this brief in Note 1. Also it should be said that the debtors' original right of redemption does not rest upon statute but upon contract. This was finally determined by the decision of the state court in *Wright* v. *Logan*, 288 Ill. App. 481, which is discussed in the preceding heading 1 in this Preliminary Statement at page 14.

3.

The opinion-order of March 11, 1939 (R. 36 to 40), at the bottom of page 38 says of the farmer debtors that "they **have failed to comply with the federal act by paying the usual and customary rental.**" The federal act under which the proceeding was pending (Section 75 (a) (r)) does not require the payment of rental. It is only Section 75 (s) which provides for rental payments and this farmer debtor proceeding has never been under Section 75 (s).

Two Essential Facts.

It is essential to understand clearly two things about this case:

1.

The Proceeding Was Never under Section 75 (s).

It was at all times under Section 75 (a) to (r). No petition under Section 75 (s) was ever filed until March 2, 1940, and then the bankruptcy court denied the right to proceed under it and dismissed the entire case in the final order at R. 48, f. 73, which was the subject of the appeal to the court below.

References to the record which show that the proceeding was never under Section 75 (s):

R. 8, f. 6 — "Debtor's petition" filed April 5, 1935, being the original petition under Section 75 (a) to (r) for composition or extension.

R. 19, f. 18 — Application for leave to continue under Section 75 (a) to (r) filed October 9, 1935.

R. 22, f. 21 — "Order of Approval" entered October 14, 1935.

R. 22, f. 22 — "Order Reinstating Cause, etc." entered October 14, 1935, specifically continuing the proceeding under Section 75 (g) of subsections (a) to (r).

R. 23, f. 23 — "Order Re-Reference" entered October 14, 1935, specifically directing proceeding under Section 75 (a) to (r) for composition or extension.

R. 25, f. 26 — "Order of Re-Reference" entered November 12, 1935, transferring reference to Conciliation Commissioner Solon again specifically referring to proceeding under Section 75 (a) to (r) for composition or extension.

R. 41, f. 28 — "Report of Conciliation Commissioner" filed January 12, 1940, giving the history of the proceeding under Section 75 (a) to (r) for composition or extension.

The only petition under Section 75 (s) ever presented to the court is that at R. 47, f. 70, filed March 2, 1940, which was dismissed in the final order at R. 48, f. 73.

2.

The Bankruptcy Court Itself Kept the Proceeding under Sections 75 (a) to (r).

It was not until March 5, 1940, in the final order appealed from, at R. 48, f. 73, that the court intimated that it considered the proceeding to be under Section 75 (s) for a moratorium instead of under Section 75 (a) to (r). The court there said:

> "The court has at all times treated this proceeding **as if it were under 75S** and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by orders entered March 11, 1939, and January 12, 1940, both of which are incorporated herein by way of reference." Quoted from the final order at R. 48, first paragraph.

References to the record which show that the bankruptcy court had never, prior to the preceding quotation, considered the proceeding to be under Section 75 (s):

R. 22, f. 21 "Order of Approval" entered October 14, 1935, approving the application to continue under Section 75 (a) to (r) for "A composition or an extension of time to pay their debts."

R. 22, f. 22 "Order reinstating cause under Section 75 and for Reference to Conciliation Commissioner to Consider Composition or Extension Agreement." entered October 14, 1935, specifically reinstating the case under Section 75 (g) of subsection (a) to (r).

R. 23, f. 23 "Order of Re-Reference" entered October 14, 1935, specifically referring to proceeding for composition or extension.

R. 25, f. 26 "Order of Re-Reference" entered November 12, 1935, rereferring the proceeding to the new conciliation commissioner and again specifically directing proceeding for composition or extension.

R. 31, f. 21 "Report of Conciliation Commissioner" filed January 12, 1940, showing conduct of the proceeding before the conciliation commissioner and recommending that further time be granted to the farmer debtors to come to a settlement with the mortgage holder. Bottom of R. 43.

R. 44, f. 68 Order granting the creditors' motion and requiring the farmer debtors to pay the mortgage debt in full or surrender possession by March 1, 1940.

R. 4, entry of March 2, 1940 Order, setting case for hearing March 4, 1940.

R. 48 Final order entered March 5, 1940, which was the subject of the appeal to the court below.

The Final Order Examined.

The final order at R. 48, f. 73, contains five separate parts, namely:

1. The amended petition filed under Section 75 (s) was dismissed.

2. The restrictions upon the mortgage holders were lifted.

3. The deed from the master in the state court foreclosure was given full effect.

4. The possession by the farmer debtors was ordered to be surrendered.

5. The farmer debtor proceeding was dismissed.

An attempt to discuss this final order under headings corresponding to its five parts would require considerable duplication of treatment. It will therefore be discussed as a whole.

The Narrow Question.

The narrow question is whether a bankruptcy court may, by its own acts, keep a farmer debtor proceeding under Section 75 (a) to (r) pending under its supervision for a length of time and then decide that it has given to the farmer debtor "the equivalent of proceedings under Section 75 (s)" and deny his statutory right to file an amended petition under Section 75 (s). As late as January 12, 1940; the court itself considered that further time should be extended. Report of conciliation commissioner, R. 41 to 43, at the bottom of page 43: "I feel that she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

If the bankruptcy court may do this then the "mandate of the statute"; the "scheme of the statute"; the "orderly procedure"; the "procedure prescribed by Section 75 (s)"; the "compliance with the procedure required by the statute"; the "orderly administration"; and so forth, so many times by this Court enjoined upon the bankruptcy court have been evaded, and the result "would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." The foregoing well-known phrases are quoted from the unanimous decisions of this court in *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California Bank*, 310 U. S. 311; and *Wright* v. *Union Central*, 311 U. S. 273.

The Statute Fixes No Time Limit.

It is to be noted that the statute does not prescribe any period of time within which composition or extension under Section 76 (a) to (r) shall be accomplished, or fail-

ing its accomplishment, when the proceeding shall be terminated. Neither does the statute prescribe when an amended petition under Section 75 (s) shall be filed in relation to the original petition. It merely provides in the first sentence of Section 75 (s) that:

> "Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt."

On this very subject it was said in *Cohan* v. *Elder*, (C. C. A. 9) 118 F. 2d 850, certiorari denied 313 U. S. 583, May 26, 1941: "We see no merit in the argument. The statute says nothing about a reasonable time. The act is to be construed liberally to accord the debtor the full measure of the relief afforded by Congress. *Wright* v. *Union Central*, 304 U. S. 502. The situation impelling the debtor to seek an adjudication under subsection (s) may not develop until the plan has been into effect for a substantial time." In that instance two years elapsed between the confirmation of a proposal under Section 75 (a) to (r) and the filing of the amended petition under Section 75 (s).

The Borchard and Wright Dismissals Compared.

The length of time the proceeding was kept pending before the bankruptcy court is immaterial and can not be used by the parties and the bankruptcy court to deprive the farmer debtor of the statutory right to file an amended petition under Section 75 (s). The parties may not resort "to a procedure not contemplated by the statute." *Borchard* v. *California Bank*, 310 U. S. 311, 317. In the Borchard case the length of time was about the same as in this case:

	Petition 75 Filed	Dismissal	From filing to Dismissal
The Borchard Case	November 17, 1934	March 25, 1939	4 years 4 months
This Elizabeth Wright Case	April 25, 1935	March 4, 1940	4 years 10 months

The basic reasoning upon which the bankruptcy court in each case based its order of dismissal in the Borchard case and in this case is essentially the same: (1) the debt is more than the value of the security; (2) the creditors have waited several years; (3) the debtors have had ample opportunity to redeem their security; (4) it is fair and equitable to remove all restrictions from the mortgage holders.

The striking similarity in the reasoning of the two bankruptcy courts is indicated by the following quotations:

1.

Reasons for the Borchard Dismissal.

From the Borchard bankruptcy court reasoning (as recapitulated by this court in *Borchard* v. *California Bank*, 310 U. S. 311, at page 316):

> "The court took testimony as to value and concluded that the real estate was not worth more than $65,000 [the mortgage debt was $89,246]. It found that, as the debtors had had several years within which to arrange an adjustment of their obligations and had been unable so to do, it was fair and equitable that the bank be allowed to proceed so as to save itself further loss. The petition was granted and the outstanding restraining order was dissolved."

2.

Reasons for the Wright Dismissal.

From the opinion-order of March 11, 1939, at R. 36 to 40. R. 38 at the beginning of the paragraph just preceding folio 63:

> "On the undisputed evidence the land is fairly worth $5,000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such creditors as have been paid, is $5,560.72." . . . R. 39, near the top of the page: "Seven years have passed since entry of the

decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them." . . . R. 48, second paragraph of the Order of March 5, 1940: "because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act. . ."

It may be assumed that this Wright dismissal was made upon the authority of the Borchard dismissal as the Borchard dismissal was not overruled until two months after the Wright dismissal.

We submit that this order of dismissal calls for the corrective action of this court as it is essentially the Borchard dismissal over again.

The Master's Deed Is Void.

The bankruptcy court could not by its order inject validity into the void deed which was delivered by the master in the state court foreclosure case while a proceeding under Section 75 (a) to (r) was pending. The bankruptcy court itself right up to the final order of March 5, 1940, considered the deed to be invalid. The subject has been presented in Note 1 pages 28-29 of this brief. It was settled by *Kalb* v. *Feuerstein*, 308 U. S. 433.

Applicable Pronouncements of This Court, on the Right of Farmer Debtor to Proceed under Section 75(s).

Finally the following clear pronouncements of this Court are applicable to this case:

"On failure of composition and extension, further opportunity for rehabilitation is afforded the debtor, through provisions enabling him to retain possession of his property, under conditions favorable to its ultimate redemption by him. These steps are carried

out under judicial supervision, subsection (s)." *Adair* v. *Bank*, 303 U. S. 350, at page 355.

"Subsection (s) of Section 75 as amended by the Act of August 25, 1935, prescribes a definite course of procedure. That subsection applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts." . . . "He succeeded in obtaining an agreement with certain unsecured creditors for an extension but the secured creditor refused consent, as Bartels could not meet all his arrears. Bartels was thus precisely in the condition prescribed in subsection (s)." . . . "The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors (subsections (a) to (r)) and, failing this, to ask for the other relief afforded by subsection (s)." . . . "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor while protecting the interests of his creditors by assuring the fair application of whatever property debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright* v. *Vinton Branch, supra; Adair* v. *Bank of American Association*, 303 U. S. 350, 354, 357; *Wright* v. *Union Central Life Insurance Co.*, 304 U. S. 502, 516, 517. . . . "We hold that on his amended petition invoking subsection (s) Bartels was entitled to be adjudged a bankrupt and to have his proceeding for relief entertained and his property dealt with in accordance with the subsection." *John Hancock* v. *Bartels*, 308 U. S. 180, at pages 183, 184, 185, 187.

"That orderly procedure includes an application by the debtor, such as was made in the present case, for an appraisal of the property, an order that the debtor remain in possession upon terms fair and equitable to him and to secured creditors, and the entry of a stay which will assure him of his possession for three years from the date of the order, upon the con-

ditions mentioned in the Act." . . . "For more than thirty-one months after the petition for appraisal was filed no action was taken. An appraisal was thereafter made. No stay order has been entered fixing terms on which the debtors are to remain in possession. The petitioners were entitled to compliance with the procedure required by the statute." *Borchard v. California Bank*, 310 U. S. 311, at page 317.

"And to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." *Wright v. Union Central*, 311 U. S. 273, at page 281.

At no time were these farmer debtors given an opportunity to redeem their farm at its appraised value. They were denied that right. They were ordered to pay the amount of the mortgage debt or be dismissed. Their amended petition under Section 75 (s) was dismissed. They have been utterly deprived of their statutory right to invoke the procedure prescribed by Section 75 (s) under their amended petition.

Judicial Amendments to the Farmer Debtor Statute.

The "Equivalent" Theory of Farmer Debtor Administration.

There has grown up in the Seventh Circuit the judicial interpretation that all the farmer debtor is entitled to under Section 75 is the "equivalent" of the provisions of Section 75 (s). We will give four instances of this judicial legislation:

First example: *In re Price*, (C. C. A. 7) 99 F. 2d 691. The farmer debtor petition under Section 75 (a) to (r) for composition or extension was filed September 1, 1936. The amended petition under Section 75 (s) was filed February 2, 1937. The court made the rental and stay period of three years under Section 75 (s) to run from the date of the filing of the original petition. The stat-

ute, Section 75 (s) (2), requires it to run from the date of the stay and rental order following an appraisal after the filing of the amended petition under Section 75 (s) as stated by this court in the first paragraph of its decision in *Wright* v. *Union Central*, 311 U. S. 273.

Second example: Again in *In re Pate*, (C. C. A. 7) 99 F. 2d 694, the rental and stay order was made to run from March 15, when the petition under Section 75 (a) to (r) for composition or extension was filed, instead of from the date of the order on June 25, 1937, under the amended petition filed pursuant to Section 75 (s).

Third example: *In re Monjon*, (C. C. A. 7) 11 F. 2d 535. It was held that although the farmer debtor "has not had the advantage of the procedure prescribed by Section 75 (s) and was entitled to file under it, yet in view of the fact that appellant has already retained possession for over three years" the farmer debtor was denied the three year stay and the district court was directed to order an immediate sale.

Fourth example: So in this Wright proceeding the District Court at R. 48, f. 73, held that the farmer debtors have "enjoyed a moratorium far in excess of that provided" and have "been treated as being within" . . . "Section 75 S." The Circuit Court below in affirming the District Court (*Wright* v. *Logan*, (C. C. A. 7) 119 F. 2d 354) adhered to its "equivalent" theory, saying in the last paragraph of its opinion at R. 71: "We conclude that appellants, who have heretofore had all the benefits to which they could possibly have been entitled under the provisions of Section 75 (s) without filing formal application for such benefits, are not now entitled to obtain a repetition of those same benefits by filing their petition for adjudication in bankruptcy" [under Section 75 (s)].

If the construction and administration of Section 75 long prevailing in the Seventh Circuit (and of which these cases merely exemplify numerous other unreported in-

stances), are to prevail, the effect throughout the nation will be disastrous and will virtually repeal Section 75 (s). Elsewhere the right of a farmer debtor to file his amended petition when the proceeding under Section 75 (a) to (r) for composition or extension is completed, and to have administration as prescribed under Section 75 (s), is recognized as guaranteed by the decision in *John Hancock* v. *Bartels*, 308 U. S. 180; in *Borchard* v. *California*, 310 U. S. 311; and in *Wright* v. *Union Central*, 311 U. S. 273. The "equivalent" theory in practice overrules those decisions of this court.

The "Reasonable Time" Theory of Farmer Debtor Administration.

The Circuit Court below in affirming the district court in this case (*Wright* v. *Logan*, (C. C. A. 7) 119 F. 2d 354) in the last paragraph of its decision found at R. 71, relied upon its judicial "reasonable time" theory, as a companion to the "equivalent" theory. It assumed that the farmer debtors in this case were responsible for the period which elapsed while negotiations were pending for composition or extension under Section 75 (a) to (r). They were not. For nearly two years after the original farmer debtor petition under Section 75 (a) to (r) was filed the mortgage holder was resisting in the state courts the mortgagors' right to redeem under their contract with him. This right was finally determined by the State of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481, decided January 15, 1937. Prior to that the conciliation commissioner in his report of May 16, 1935, at R. 18, f. 15, reported to the court that the mortgage holder filed a motion "asking that said proceeding be dismissed. Said motion is herewith referred to the United States District Court for consideration and instruction." The district court did not dismiss the proceeding. It merely ordered the farmer debtors to file an amended petition under Section 75 (s) or show cause why their original petition under Section 75 (a) to (r) should not be dismissed. R. 19, f. 17. The farmer debtors complied with the show

cause order by requesting leave to continue under Section 75 (a) to (r), setting up the void deed from the master in the state foreclosure action, their verbal contract with the mortgage holder for redemption, and the loan commitment they had received from the Federal Land Bank of "more than enough to pay him" but which he refused. R. 19, f. 18, to R. 21, f. 20.

The bankruptcy court granted the petition for rereference stating in its order that "And it further appearing to the court that said debtors have not had sufficient opportunity to submit to their creditors a proposal of composition or extension as provided in said Section 75," and expressly rereferring the proceeding under Section 75 (a) to (r). R. 22, f. 22; R. 23, f. 23; R. 25, f. 26.

By his report dated January 11, 1940, at R. 41, f. 28, to R. 43, f. 30, at R. 43, the conciliation commissioner recapitulated the negotiations that had been going on. He reported that the farmer debtors had settled with all creditors but mortgage holder Logan with the exception of a $38 claim. That is they had settled $6,500 of scheduled claims. R. 10, f. 8, and R. 17, f. 13. The conciliation commissioner further reported that they had paid the taxes and that he held an additional sum of $450 paid to him by them. The conciliation commissioner on this date of January 11, 1940, said: "I feel that she should be accorded an additional period in which to accomplish the plan which she and Mr. Pace have outlined."

The bankruptcy court then continued to further prolong the proceeding by requiring the farmer debtors to pay the full amount of the mortgage debt, without regard to the value of the security. R. 4, entry of March 9, 1939; R. 40, f. 27; R. 36, f. 60; R. 5, entry of July 11, 1941; R. 5, entry of August 11, 1939; R. 41, f. 66; R. 41, f. 28; R. 44, f. 68; R. 5, entry of March 2, 1940; R. 5, entry of March 4, 1940.

If under such circumstances, after a bankruptcy court has by its own actions kept a farmer debtor proceeding pending under Section 75 (a) to (r), it may terminate it because it declares the farmer debtor has had a "reasonable time" and had had the "equivalent" of what Section 75 (s) provides, the court has, by judicial legislation, enacted a law materially different from the procedure and relief which the legislative branch of the government prescribed. Thereby the judicial branch of the government has amended the Constitution in violation of that instrument which created it and delineated its power.

In the Ninth Circuit, the "reasonable time" and "equivalent" theories were expressly repudiated. In its opinion in *Cohan* v. *Elder*, (C. C. A. 9) 118 F. 2d 850, certiorari denied 313 U. S. 583, May 26, 1941, that court answered the argument that the court was without jurisdiction to grant relief under Section 75 (s) because the amended petition was not filed "within a reasonable time" by saying "the statute (Section 75) says nothing about a reasonable time. The act is to be construed liberally to accord the debtor the full measure of the relief afforded by Congress." The opinion then cited *Wright* v. *Union Central*, 304 U. S. 502, and said further that some time may elapse before the need for Section 75 (s) develops.

Effect of the "Equivalent" and "Reasonable Time" Judicial Theories.

The effect of the "equivalent" and "reasonable time" judicial theories in their practical application upon the farmer debtor is that the law which the Congress has enacted and which this court has sustained in eleven unanimous decisions is repealed. Its importance to the mortgage holders is that, except for some delay, the farmer debtor law is rendered innocuous.

In the manipulation of those theories all the mortgage holder need do is to hold out an encouraging "front" to the farmer debtor permitting him to continue to ap-

pease his secured creditor first by one means, then another, and another, none being quite acceptable to the secured creditor. The unsuspecting farmer debtor is lured on by the express provision of Section 75 (q) which makes it the duty of the conciliation commissioner to assist the farmer debtor from the beginning and provides that in all matters subsequent thereto "farmers shall not be required to be represented by an attorney in any proceeding under this section." All proceedings under bankruptcy legislation are "proceedings in equity" and all bankruptcy courts are "courts of equity." Yet the farmer debtor, trusting in the statute and in the conduct of the parties, finds in the end that he is out of court because he has had the "equivalent" of the Act of Congress and has had a "reasonable" time. The judiciary of the State of Illinois has excoriated such conduct and repudiated similar theories in *Union Central Life Insurance Company* v. *Anderson*, 291 Ill. App. 423.

The Practical Importance of the Question Submitted.

The importance of this case to the petitioners is not the measure of the judicial importance of the issue raised here. There are several millions of farm mortgages within the jurisdiction of this court. Liquidation has considerably reduced their number since Section 75 was enacted, chiefly because Section 75 has been successfully evaded upon one legal theory or another and farm debts were not adequately protected as the congress intended. Farmer debtors ordinarily are unable to finance review of unfavorable decisions and scores of decisions which later were found to be unlawful thus became nevertheless the "law of the case." Laymen farmers cannot understand this. Thousands of farm titles were lost before Section 75 (s) (Act of August 28, 1935) was held constitutional in 1937, in *Wright* v. *Vinton*, 300 U. S. 440. Many more were lost in states having statutory periods of redemption before *Wright* v. *Union Central*, 304 U. S. 502,

held in 1938 that Section 75 (n) is supreme. Others were lost on the grounds of "lack of good faith" and "inability to rehabilitate" (judicially held to be impliedly incorporated in the Act of March 3, 1933, and in the Act of August 28, 1935) before the 1938 decision in *John Hancock* v. *Bartels*, 308 U. S. 180. State courts sold farms out of Section 75 (Act of March 3, 1933) before *Kalb* v. *Feuerstein*, 308 U. S. 433, stopped them in 1940. Many more have been lost along the way on the "reasonable time" and "equivalent" theories until *Borchard* v. *California*, 310 U. S. 311, was decided in 1940. Rights of redemption under Section 75 (s) (3) (Act of August 28, 1935) were lost before the decision in *Wright* v. *Union Central*, 311 U. S. 373, in 1940.

A Last Refuge.

Except for the theory that the definition of a "farmer" in Section 75 was superceded by the Chandler Act, which was rejected in *Benitez* v. *Bank*, 313 U. S. 270, last term, the last refuge for mortgage holders who would destroy the effect of Section 75 would seem to be these "equivalent" and "reasonable time" theories. Notwithstanding this court's eleven unanimous decisions that Section 75 must be administered according to the "mandate of the statute" and its "definite course of procedure" the persistent fault-finding mortgage holders have so far succeeded in thwarting the law. It should be frankly stated that this sorry state of affairs is not primarily due to the fault of the courts but to the misfortune of individual farmer debtors who are unable to secure legal services for the defense of their law. On the other side, the extensive legal staffs of large corporate mortgage holders having mortgages all over the county have been able to secure favorable decisions in one court or another. They have never been able to be so successful where mortgages come within the moratorium statutes relating to corporations (Section 77B), railroads (Section 77), or to municipalities (Section 81 *et seq.*). When confronted with those

laws they submit to the evident purposes embodied in the legislation of the Congress made pursuant to the bankruptcy power of the Constitution.

Nor is the importance of Section 75 to be measured by the number of cases filed under it. For every farmer who invokes it, there are hundreds of others who need not file under it if it is effective. Mortgage holders respect or disregard it in the measure of its effectiveness.

The Decision Below Is Contrary to the General Tenor of Federal Decisions.

1.

The decision below is in conflict with the decision of this court in *John Hancock* v. *Bartels*, 308 U. S. 180. That decision held that a farmer debtor whose petition under Section 75 (a) to (r) has failed to accomplish composition or extension has a right to seek a three year moratorium and redemption of his property from mortgage by invoking Section 75 (s) through an amended petition. The decision below denied that right.

2.

In so far as the decision below may be defended upon the ground of the length of time the proceedings were pending under Section 75 (a) to (r) for composition or extension (said length of time being due to the acts of the court itself), it is in conflict with the decision of this court in *Borchard* v. *California*, 310 U. S. 311.

3.

The decision below is in conflict with the decision of this court in *Kalb* v. *Feuerstein*, 308 U. S. 433, which decided that a deed in foreclosure delivered during the pendency of proceedings under section 75 (a) to (r) is absolutely void, that the grantees in said deed take no right whatsoever, and that their possession pursuant to such deed is unlawful and void.

4.

The decision below is in direct conflict with the decisions of other federal courts.

It is in conflict with the following Circuit Court of Appeals decisions:

Second Circuit:

Federal Land Bank v. *Hansen*, 109 F. 2d 139.

Fifth Circuit:

McCook v. *Federal Land Bank*, 108 F. 2d 185.

Sixth Circuit:

Ellis v. *Connecticut Mutual Life Insurance Company*, 111 F. 2d 896.

Trego v. *Wright*, 111 F. 2d 990.

Schreiver v. *Oxford*, 116 F. 2d 684.

Seventh Circuit:

Zumkehr v. *Steinman*, 108 F. 2d 448.

Eighth Circuit:

Peterson v. *John Hancock*, 116 F. 2d 148.

Ninth Circuit:

Cohan v. *Elder*, 112 F. 2d 967.

Cohan v. *Elder*, 118 F. 2d 850.

Tenth Circuit:

Paradise Land Company v. *Federal Land Bank*, 108 F. 2d 832.

It is in conflict with the following District Court decisions:

District Court of Idaho:

In re Shaw, 35 Fed. Supp. 337.

In re Haun, 35 Fed. Supp. 338.

District Court of Illinois:

In re Storm, Commerce Clearing House, Bankruptcy Law Service, Paragraph 52579.

District Court of New Hampshire:

In re Byrenius, 30 Fed. Supp. 243.

District Court of New York:

In re Williams, Commerce Clearing House, Bankruptcy Law Service, Paragraphs 53225 and 53226.

In re Mahaffey, 34 Fed. Supp. 760.

District Court of Pennsylvania:

In re Kauffman, 38 Fed. Supp. 153.

5.

The decision of the court below is directly in conflict with the decision of another Circuit Court of Appeals on the same subject. *Cohan* v. *Elder*, 118 F. 2d 850 (C. C. A. 9). Certiorari denied in 313 U. S. 583.

Conclusion.

We think this case presents an urgent situation which requires correction. The decisions below are contrary to the spirit of all the eleven unanimous decisions of this court and particularly to those of *John Hancock* v. *Bartels*, 308 U. S. 180; *Borchard* v. *California*, 310 U. S. 311; and *Kalb* v. *Feuerstein*, 308 U. S. 433.

The decisions below are in direct conflict with the decisions in the several circuits whose decisions are cited at pages 33 and 34 of this brief. Particularly it is in conflict with *Cohan* v. *Elder*, (C. C. A. 9) 118 F. 2d 850, to which certiorari was denied by this court in 313 U. S. 583, and also in conflict with those of the several district courts cited at pages 33 and 34 of this brief.

The questions involved concern many hundreds of thousands of farm mortgages.

Respectfully submitted,

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November 18, 1941.

APPENDIX.

Wright v. Logan, 288 Ill. App. 481 Decided January 15, 1937.

(Emphasis is supplied)

That portion of the opinion of this state case which considers the argument advanced by the mortgage holder that the United States Circuit Court of Appeals in *Wright v. Logan*, 75 F. 2d 687, had decided that the mortgagors did not have a right of redemption and that the subject was therefore *res judicata*, reads as follows:

> "Appellee further contends that the doctrine of *res judicata* applies in this case and that the question as to whether or not an oral contract had been entered into between appellee and appellants was decided in the United States Circuit Court of Appeals.
>
> It appears from the record that on the second or third day of May, 1934, plaintiffs herein filed a petition in bankruptcy in the United States District Court for the Eastern District of Illinois and submitted to the bankruptcy court a proposition for a five year extension of the debts pursuant to Section 74 of the Bankruptcy Law. Upon a hearing the referee denied confirmation of the proposed extension, which ruling was confirmed by the District Court. In that proceeding it was necessary for the appellants to have a majority of the creditors in number and amount **consent in writing** to the proposed extension. It was contended by the plaintiffs in the Court of Appeals that defendant Logan had orally consented to an extension of time for the redemption of the property in question and that therefore and thereby he had consented to the proceedings in the bankruptcy court. **Whether or not he had consented to an extension for the time of redemption was not a matter in issue, and was not necessary to a determination of the issues before the federal Court of Appeals.**

Justice Alschuler in his opinion stated, *obiter*, that if Mr. Logan had expressed willingness to take the money due on his mortgage, even if construed to apply to a time after the redemption, it certainly was not the equivalent of his assent to a proposition that, for a period of time which might extend to five years, he would refrain from taking deed to the property.

The bankruptcy proceeding was decided adversely to the plaintiffs. There was only one question involved, namely: Had a majority of the debtors of appellants in number and in amount signed the extension agreement? Whether or not appellants and appellee had entered into an agreement to extend the time of the equity of redemption was not a material issue there; consequently the statement of the court in its opinion, that it did not appear from the evidence that a valid oral agreement had been entered into, could not and does not constitute *res adjudicata* in this proceeding.

> 'To constitute a bar, a former adjudication must have been upon a matter actually at issue, the determination of which was essential to the decree . . . It must conclusively appear that the matter was so at issue that it was necessarily determined by the court rendering the decree which is interposed as a bar,' by reason of such estoppel. *Fineman* v. *Goldberg*, 329 Ill. 507, 511; 161 N. E. 57, 59; *White* v. *Sherman*, 168 Ill. 589, 48 N. E. 128, 61 Am. St. Rep. 132.
>
> (7) 'A finding of facts not necessary to uphold a former judgment does not conclude the parties. Even though a decree in express terms professes to find a particular fact, yet if such fact was immaterial and the controversy did not turn upon it, the decree will not conclude the parties in reference to that fact.' *Hunter* v. *Troup*, 315 Ill. 293, 298; 146 N. E. 321, 322.

The evidence clearly shows that the plaintiffs remained in possession of their farm after the foreclosure and made improvements during the period of redemption with the knowledge and consent of the defendant, relying on their arrangements with the defendant for the extension of the time of redemption.

A doctrine of *res adjudicata* did not preclude them from maintaining their action. The decision is therefore reversed and the cause remanded, with directions that the court ascertain the amount due from the plaintiffs to the defendant; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the court, and that upon payment thereof, the deed from the master in chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled, and that the defendant, Logan, be required upon such redemption, to reconvey by a proper deed to Elizabeth Wright the title acquired by him to the property through said master's deed and certificate."

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941

NO. 229

ELIZABETH WRIGHT and CHARLES C. WRIGHT,

Petitioners,

v.

GUSTA LOGAN, HARRIET LOGAN SAWYER and ESTA LOGAN REESE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CERTIORARI GRANTED OCTOBER 15, 1941

REPLY BRIEF OF THE PETITIONERS

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Preliminary Statement

All emphasis in this brief is supplied unless otherwise noted.

The Order of This Reply Brief

This reply brief will reply to the respondents' brief in the same order of that brief, using the paging of the respondents' brief as headings in this brief.

As the respondents' brief in several instances treats a subject in different places, this brief will treat one subject at one place with proper cross references at the other headings of respondents' brief where the same subject was mentioned.

Page 3 of Respondents' Brief (Under Heading "The Facts")

In the first full paragraph on page 3 the respondents' brief says:

> "Three months **after the expiration of their period of redemption,** on May 3, 1934, petitioners filed their petition. . . ."

This statement is repeated in one form or another 24 times in 28 pages of respondents' brief (from page 2 to page 30). The form of expression is varied but the argumentative suggestion that the petitioners had no right in their mortgaged farm is the same. For instance, on page 2, it is the **"equity of redemption"** and on page 11 it is the **"right of redemption."**

Petitioners' Right of Redemption by Special Agreement

The "period of redemption" thus referred to by respondents is the Illinois statutory period of redemption following sale in foreclosure. It is twelve months for the mortgagor and three months additional for his creditors, or fifteen months in all. During this period the purchaser

holds a certificate of purchase which may be exchanged for a deed following expiration of the statutory period.

But these petitioners have a **right of redemption by special** agreement with the mortgagor, W. S. Logan, which was entered into after the foreclosure sale, while he held the certificate of purchase. This contractual right of redemption is independent of any statutory period of redemption. The existence of this **right of redemption by special agreement** was determined by the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481. From this determination of fact, no review was ever sought and it is the law of this case. It held that the petitioners' **right of redemption by special agreement** arose in 1933 before the twelve months statutory period expired and still existed at the date of the decision in 1937, nearly four years after the foreclosure and more than two years after the farmer debtor jurisdiction of the bankruptcy court was invoked in 1935 (R. 8, folio 6).

The determination by the Appellate Court of Illinois that the **right of redemption by special agreement** existed came about in this manner. The farmer debtors applied to the bankruptcy court on October 9, 1935 (R. 19, folio 18), for leave to continue their efforts to seek composition or extension with their creditors. In their application they set up their **right of redemption by special agreement** with the mortgagor. (They also averred that the mortgagor, as holder of the certificate of purchase had taken a void deed while proceedings under Section 75 (a) to (r) were pending). The bankruptcy court granted the petition and re-referred the case to the conciliation commissioner for further attempts at composition or extension (R. 22, folio 21; R. 22, folio 22; R. 23, folio 23; R. 24, folio 24; R. 25, folio 26).

Prior to this application to the bankruptcy court setting forth their **right of redemption by special agreement,** the petitioners had brought suit in the state court to have their right established as is shown by the report of the conciliation commissioner on September 28, 1935, at R. 18, folio 16, where he said, "Case pending here in our local court to determine the right of debtors to redeem from W. S. Logan, creditor." This "local court" case was the one, cited in the second paragraph, which by appeal in *Wright* v. *Logan*, 288 Ill. App. 481, found that the **right of redemption by special agreement** then existed and continued to exist at the date of the decision in 1937.

This right of redemption by special agreement was consistently recognized by the bankruptcy court. As late as March 11, 1939, which was **more than six years after the foreclosure sale, the bankruptcy court said,** at R. 39, top of page:

> "The deed held by the mortgagees has been retained in their possession under order of this court directing that **it shall not be recorded or given any effect** until and unless this court shall so direct." . . . "But in case this court found it necessary to order a sale, there would be a **period of redemption** of ninety days" . . . "**The jurisdiction of this court** over the deed held by petitioners [meaning the mortgage holders] and over petitioners be and the same **is hereby retained;** that **the debtors remain in possession and custody of the property,**" . . . "This matter will be continued for a period of 120 days from this date. During that time debtors shall have every **opportunity to redeem from the mortgage sale**" . . .

Petitioners' Statutory Period of Redemption

Apart from the petitioners' **right of redemption by special agreement,** which was fully recognized by the bankruptcy court at all times, the state statutory redemption

provisions related to this case as follows: Before the mortgagee Logan who held the certificate of purchase in foreclosure became **entitled** to a deed, the petitioners, on May 3, 1934, filed their individual debtors' petition under Section 74 of the Bankruptcy Act. Thereupon the bankruptcy court issued a restraining order against all creditors (R. 7, folio 4). Later, on April 5, 1935, the bankruptcy court granted the petitioners leave to file as farmer debtors for agricultural composition or extension under Section 75 (a) to (r) (R. 7, folio 5). They accordingly filed their farmer debtor petition on the same date (R. 8, folio 6). By invoking Section 75 (a) to (r), subsections (n) and (o) thereof immediately became automatically operative to stay all proceedings in other courts. *Kalb* v. *Feuerstein*, 308 U. S. 433. Thereafter, the bankruptcy court dissolved the restraining order under **Section 74** (R. 7, folio 4). This did not nullify the effect of the provision of Section 75 (n) putting the farmer debtors and all their property under the exclusive jurisdiction of the bankruptcy court. Nor did it dispense with the specific provisions of Section 75 (o) which prescribe specifically how the prohibitions upon proceedings in a state court may be lifted. The order dissolving this section 74 restraining order is at R. 17, folio 14. No compliance with Section 75 (o) was ever sought or granted. Yet the foreclosure deed was delivered on July 27, 1935 (Respondents' brief, page 28, next to last paragraph.) This deed, delivered while Section 75 (n) and (o) was operative, was therefore wholly void. *Kalb* v. *Feuerstein*, 308 U. S. 433.

The Illinois Law of Foreclosure

Lest it be suggested that some right was lost to the farmer debtors by the foreclosure sale it is here submitted that under Illinois law the purchaser at a foreclosure sale is

entitled to a certificate of purchase but **title remains in the mortgagor until the delivery of a deed to the holder of the certificate of purchase.** *Lightcap* v. *Bradley*, 186 Ill. 510, 532:

> "By the decree and by the statutes the title of the mortgagor and those claiming under him would be divested and the legal title vested in defendant [the mortgagee who held the certificate of purchase], upon the execution of a deed to her."

In this case of *Lightcap* v. *Bradley*, the mortgagee purchased the real estate at foreclosure sale and took a certificate of purchase. She then went into possession and paid the taxes for fifteen years but did not receive a deed. The mortgagor never redeemed. It was held that the mortgagee purchaser had no right whatever in the land.

It was this leading Illinois case of *Lightcap* v. *Bradley*, 186 Ill. 510, and subsequent cases, which were the basis of the decision of Judge Lindley in *In re Duffy and Raymond*, Eastern District of Illinois, 9 Fed. Supp. 166, which although overruled by the Circuit Court of Appeals for the Seventh Circuit, was ultimately sustained by this court in *Wright* v. *Vinton*, 300 U. S. 440, and in *Wright* v. *Union Central*, 304 U. S. 502. Thus Section 75 (n) was established as the supreme law of the land.

At page 15 of the brief of the respondents in answer to the Petition for Certiorari in this case, they argued that *Lightcap* v. *Bradley*, 186 Ill. 510, was reversed by this court in *Bradley* v. *Lightcap*, 195 U. S. 1, and *Bradley* v. *Lightcap*, 195 U. S. 24. It will be observed that in the present respondents' brief at page 17 this assertion is omitted.

As to these decisions, it need only be said that they did not reverse *Lightcap* v. *Bradley*, 186 Ill. 510, except in two

respects which do not affect its authority here. The then recently enacted Illinois statute as applied to the facts of that case then before this court in 1904 was held unconstitutional (1) because it was retroactive, having been **enacted after the execution of the mortgage** and (2) because the **mortgagee was in actual possession** before foreclosure and before the statute took effect. Thus it is seen that, where these two facts do not exist, *Lightcap* v. *Bradley*, 186 Ill. 510, is the law of Illinois exactly as Judge Lindley said it was in his *Duffy* and *Raymond* decision in 9 Fed. Supp. 166, and as sustained by this court.

Thus it is that there is no merit in the repeated statements in respondents' brief that the petitioners' right of redemption had expired.

Page 3 of Respondents' Brief
(Under Heading "The Facts")

In the same first full paragraph on page 3 of the respondents' brief says of the original petition under Section 74 that:

> "The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the petitioners, having permitted the redemption period to expire, there was no contractual relation of petitioner and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (R. 27).
>
> On August 30, 134 the District Court entered an order approving and confirming the order of the Referee (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied. *Wright* v. *Logan*, 75 F. (2d) 687."

This statement is adopted from the opinion order of the bankruptcy court below (R. 36 to 40). It has been answered at pages 14 to 16 of the Petitioners' brief, to which reference is here made.

Page 4 of Respondents' Brief

At the top of page 4 of respondents' brief appears the following statement:

> "That Court [the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. App. 481] held a reasonable time should be given petitioners to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statutes, Chapter 110, Paragraph 212, it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing court. Petitioners did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon petitioners' failure to file such mandate (R. 29)."

In controversion of the foregoing statement, we submit the following:

1. The only fact determinative of the right of the petitioners to invoke the federal jurisdiction is **the existence of a property right** in the petitioners when they filed their debtor farmer petition under Section 75. If they then had this substantive right, Section 75 (n) makes them and their property subject to the exclusive federal jurisdiction. The procedural method of exercising that right of redemption is taken over from state procedure into federal procedure by Section 75.

2. The court of last resort of the State of Illinois, where the petitioners reside and where their property is located, unequivocally determined that the petitioners had that substantive right of redemption every moment from the foreclosure sale to the date of its decision in 1937. This was nearly two years after the federal jurisdiction was invoked. On this subject of whether the petitioners' right of redemption existed that court said, at the end of its opinion:

> "The evidence clearly shows that the plaintiffs remained in possession of their farm after the foreclosure and made improvements during the period of redemption with the knowledge and consent of the defendant, relying on their arrangements with the defendant for the extension of the time of redemption.
>
> A doctrine of *res adjudicata* did not preclude them from maintaining their action. The decision is therefore reversed and the cause remanded, with directions that the court ascertain the amount due from the plaintiffs to the defendant; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the court and that upon payment thereof, the deed from the master in chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled, and that the defendant, Logan, be required upon such redemption, to reconvey by a proper deed to Elizabeth Wright the title acquired by him to the property through said master's deed and certificate."

3. Obviously the petitioners sought the decision of the Illinois court to establish their substantive right of redemption. The conciliation commissioner, on May 16, 1935, in his report to the bankruptcy court, reported a "case pending here in our local court to determine the rights of debtors to redeem from W. S. Logan, creditor." (R. 18, f. 16.)

4. In their petition to the bankruptcy court for permission to continue under Section 75 (a) to (r), instead of filing an amended petition under Section 75 (s), the farmer debtors informed the court, among other things:

> "That before and after the twelve months period of redemption provided by Illinois Statute to debtors from foreclosure, mortgage sales expired, said creditor at different times and places, at his office in Paris, Illinois, and elsewhere, verbally agreed with your petitioners that they could redeem said farm any time they could get the money to pay him what they owed him; that they could redeem the property from him either before or after the twelve months period of redemption expired after said sale and even after that time he would deed said property to their daughter or any one else they suggested; . . ." (R. 20, bottom of page f. 19.)

5. In its jurisdictional decision in the same case in *Wright* v. *Logan*, 364 Ill. 33, the Supreme Court of Illinois said:

> **"The only controversy between the parties was as to the right of redemption."**

and directed that the appeal be presented to the Appellate Court.

6. In addition to all of the foregoing the bankruptcy court itself, during all of the time the farmer debtor proceedings was pending, held that the right of redemption existed. It was not questioned.

On March 9, 1939, this entry appears:

> "Court directs counsel to submit to the court any agreed statement as to amount due at this time including deficiency judgment." (R. 4, entry of March 9, 1939.)

On March 11, 1939, the district judge said:

"The deed held by the mortgagees has been retained in their possession under order of this court directing that it **shall not be recorded or given any effect** until and unless this court shall so direct" (R. 39, top of page).

"Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possibly work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood" (R. 39, last sentence of paragraph which continues over from page 38).

"The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, **there would be a period of redemption** of 90 days" (R. 39, the beginning of the first whole paragraph on the page).

"Accordingly it is the order of the court that **the jurisdiction of this court over the deed** held by the petitioners **and over the petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property.** . . ." (R. 39, beginning at f. 64).

"This matter will be continued for a period of 120 days from this date. During that time **debtors shall have every opportunity to redeem from the mortgage sale** and to make any and all possible adjustments and composition with their creditors" (R. 39, bottom of page).

7. The respondents themselves fully recognized the existence of the right of redemption. Their petition to the bankruptcy court, from which this case arises appears

at R. 26 to 30. The prayer which begins at the bottom of R. 29, seeks (1) a report from the conciliation commissioner, (2) for authority to take possession, (3) that the bankruptcy court find the amount due and fix "a reasonable time . . . to pay" and (4) fix a time for hearing.

8. The Circuit Court of Appeals likewise agreed that the bankruptcy court held jurisdiction over the right of redemption. See the opinion at R. 70 and 71. That court based its decision on factors inherent in Section 75. It did not base its decision upon the theory that the bankruptcy court had no jurisdiction over the right of redemption.

Therefore it appears clear that the right of redemption has always existed since foreclosure. First, by the statutory provision. Second, by the special agreement for the right of redemption. Third, the bankruptcy court has always held that it had complete jurisdiction of that right of redemption, and its jurisdiction was conceded by the respondents whose objections were based upon the procedural provisions of Section 75.

Page 6 of Respondents' Brief

Under the heading "Comments on Certain Statements in Petitioners' Statement of the Case," the respondents' brief says, at the bottom of page 6:

> "In petitioners' statement of the case on page 3, paragraph 6, the implication is apparent that petitioners filed their petition under Sub-Section 75 in a proper and lawful manner. When the facts are fully considered we discover that on September 30, 1935, the District Court entered an order granting leave to petitioners to amend their petition to include a prayer

for adjudication under Sub-Section (S) of 75 of the Bankruptcy Act as amended within ten days of the date of said order and that the petition mentioned in said paragraph was filed with an entire disregard of the Court's order."

The record itself is a sufficient answer to the foregoing quotation. The petitioners sought and obtained permission from the bankruptcy court to continue under Section 75 (a) to (r) for composition or extension instead of going under Section 75 (s) by an amended petition.

R. 19, f. 17. September 30, 1935. The court ordered the petitioners to file their amended petition under Section 75 (s) or within ten days show cause why their petition should not be dismissed.

R. 19, f. 18. October 9, 1935. The petitioners stated to the court their right of redemption by special agreement with the mortgagee and his refusal to comply therewith. They prayed that their proceeding continue under the provisions for composition or extension.

R. 22, f. 22. October 14, 1935. The bankruptcy court granted the prayer of the petitioners and reinstated the case under Section 75 (a) to (r) and ordered that it "be referred to the duly qualified conciliation commissioner of Edgar County for such proceedings as provided under subsection (g) of Section 75 as amended."

R. 23, f. 23. October 14, 1935. The court re-referred the case to the conciliation commissioner for administration for composition or extension "and if application for confirmation of proposal for composition or extension under said Section 75 be duly filed with the conciliation commissioner, to hold, after due notice to creditors, a final creditors' meeting . . ."

R. 24, f. 24. November 9, 1935. The petitioners apprised the bankruptcy court that the conciliation commissioner was disqualified because as an attorney he represented a creditor.

R. 25, f. 26. November 12, 1935. The court re-referred the case to a different conciliation commissioner with like instructions to proceed under Section 75 (a) to (r) for composition or extension.

Page 8 of Respondents' Brief

At the end of the first paragraph of page 8 of the respondents' brief, it is said:

> "It is stated in paragraph 10 of the statement of the petitioners on page 4 that the farmer-debtors paid rent. The Court found to the contrary."

We merely quote from the report, dated January 11, 1940, of the conciliation commissioner before whom the case pended. R. 42, f. 29:

> "March 21, 1939—Received from Elizabeth Wright $300.00 in payment of 1938 rental of the East Half SE SE Sec. 20 and North Half SW of the NW of Sec. 21, all in Twp. 14 North, Range 12, West of the 2nd P. M.
>
> March 28, 1939—Entered into a lease of 40 acres, a part of the bankrupt estate, with Elizabeth Wright and Charles C. Wright for the crop year from the 1st of March, 1939 to the 1st of March, 1940, at an annual rental of $300.00, payable $150.00 September 1, 1939 and $150.00 on January 1, 1940. This lease was made pursuant to an order of the United States District Court for the Eastern District of Illinois entered in Bankruptcy No. 2414-D on March 11, 1939.
>
> July 19, 1939—Received from Elizabeth Wright $150.00 in payment of the first instalment of rent for the crop year 1939 due upon her lease."

R. 43, f. 30:

> "Mrs. Wright has informed me that she has paid the 1938 taxes on the 40 acre and 70 acre tracts.
>
> Your commissioner further respectfully reports that he now has on hand the sum of $450.00 which are rental receipts from Elizabeth Wright."

There is no power in a bankruptcy court to require rent to be paid under Section 75 (a) to (r). Rent may be ordered only under Section 75 (s).

Pages 12 to 18 of Respondents' Brief

We believe that the reliance placed upon the cases cited by the respondents is unwarranted and we discuss them here.

Buttars v. *Utah*, 116 F. 2d 622 (C. C. A. 10) cited at page 12 of respondents' brief).

(1) The opinion recognized that a former order of October 9, was invalid in fixing an arbitrary sixty day redemption period but held that since there was no appeal it became the "law of the case." (2) The holding that the force of Section 75 (n) and (o) is spent in the interim between Section 75 (a) to (r) and Section 75 (s) and therefore foreclosure may then be accomplished is in conflict with the decisions of other jurisdictions. For example *Schriever* v. *Oxford*, 116 F. 2d 684 (C. C. A. 6), decided six months later, held that by authority of *John Hancock* v. *Bartels*, 308 U. S. 180, Section 75 (n) and (o) must be interpreted so to preserve the opportunity to administer the procedure under Section 75 (s).

It should also be especially noted that *Buttars* v. *Utah* misquotes Section 75 (n). **According to that opinion (in the second from the last paragraph) Section 75 (n) extends the right of redemption necessary only "for the purposes of carrying out the provisions of the act that is to afford the debtor an opportunity to work out a composition or extension of his debts" under Section 75 (a) to (r). The statute does not confine Section 75 (n) to the Act but to the entire Section 75.** It says that Section 75 (n) shall be extended "for the period necessary for the purpose of carrying out the provisions of this **Section**" which includes Section 75 (s). **The exclusive jurisdiction of the bankruptcy court under Section 75 (n) is unlimited for all the purposes of Section 75** (that is Section 75 (a) to (r) and Section 75 (s)—not merely for a part of it.

In re Cresap, 99 F. 2d 772 (C. C. A. 7) (pages 12 to 14 of respondents' brief).

The Seventh Circuit held (1) that **the petitioner had never been a farmer but was a railroad man and never lived on a farm.** This settled the matter. But the decision went further and held (2) that he had "**no hope of rehabilitation.**" The District Court had dismissed the case under authority of the Seventh Circuits *Lowmon* and *Wright* v. *Union Central* decisions which held that the statutory right of redemption was not affected by Section 75. When these decisions were overruled by this court in *Wright* v. *Union Central*, 304 U. S. 502, the Circuit Court reverted to the "farmer" and "rehabilitation" subjects which had not theretofore entered the case. Later this court overruled the "rehabilitation" theory in *John Han-*

cock v. *Bartels*, 308 U. S. 180. The *Cresap* decision is now repudiated except for the holding that the petitioner was not and never was a "farmer."

In their original reply brief, filed by these respondents in this case on the petition for certiorari, they there said of this *Cresap* decision at page 12:

> "The court held that the debtor had nothing more than a bare legal title which was valueless so far as rehabilitation was concerned and the order striking the real estate from the debtor's schedule was affirmed."

This we think correctly shows the gist of that decision and it was overruled by this court in *John Hancock* v. *Bartels*, 308 U. S. 180.

Apropos of the respondents observations at the foot of page 14 of their brief that the petitioners violated the order of September 30, 1935, we suggest that the order of the bankruptcy court of September 30, 1935 (R. 19, f. 17) was rescinded by that court in its orders of October 14, 1935, November 9, 1935, and November 12, 1935, at R. 22, R. 23, R. 24, and R. 25, as shown at pages 13 and 14 of this reply brief.

Bernards v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) (page 15 of respondents' brief).

All proceedings in controversy occurred under the original or under the present Section 75 (s) (the Act of June 28, 1934, or the Act of August 28, 1935). All proceedings in this *Wright* case have occurred under Section 75 (a) to (r). There was no **right of redemption by special agreement** in the *Bernards* case as in this case but the statutory right of redemption expired normally.

While the farmer debtor proceeding was being conducted under the first Section 75 (s) by the bankruptcy court and four days after appraisers were appointed, this court held the law to be unconstitutional. **The case had passed through and out of Section 75 (a) to (r) for composition or extension and into the invalid Section 75 (s)** under which the referee in bankruptcy (then by the law designated to conduct the proceeding) had adjudicated them bankrupts. **DURING THE PERIOD AFTER THE SUPREME COURT DECISION AND BEFORE THE PRESENT SECTION 75 (s) WAS ENACTED THE REAL ESTATE WAS SOLD IN FORECLOSURE.**

Section 75 (a) to (r) having been exhausted and there being no Section 75 (s), **there was no applicable law retaining the exclusive jurisdiction of the bankruptcy court as to mortgaged real estate, except the general bankruptcy law which permitted disclaimer, abandonment and foreclosure of mortgaged real estate. The state court had POWER when it acted.**

All subsequent litigation in the bankruptcy court under the present Section 75 (s) was bottomed upon two foreclosure sales in the state court conducted when there was no farmer debtor law operative. Under such circumstances, it necessarily followed that the litigation concerning the validity of the foreclosures sales should be conducted according to the rules and laws governing reviews and appeals. The doctrine of the "law of the case" was applicable.

In re Davis, 22 Fed. Supp. 12, pages 15 and 16 of respondents' brief.

This case is most ineptly quoted and cited by the respondents. As we were compelled to say in our reply

brief on the application for certiorari, the quotation at page 16 of respondents' present brief is neither correct nor complete. It omits the following sentence:

> **"This court's original thought, as expressed in In re Duffy and In re Raymond, 9 Fed. Supp. 166, can not prevail in view of the later decisions of the Circuit Court of Appeals [Seventh Circuit] in the two cases mentioned."**

The "original thought" of the district judge (in the *Duffy and Raymond* opinion) was exactly contrary to the opinion he was announcing in the *Davis* case. The "two cases mentioned" were (1) the *Lowman* case, (C. C. A. 7) 79 F. 2d 887, and (2) *Wright* v. *Union Central*, (C. C. A. 7) 91 F. 2d 894, both of which were later overruled by this court, the first in *Wright* v. *Vinton*, 300 U. S. 440 (where it was specifically mentioned in the first paragraph), and the second in *Wright* v. *Union Central*, 304 U. S. 502, which reversed it.

The district judge originally held that before delivery of a deed to the holder of the certificate of purchase the mortgagor still had his right of redemption under Illinois law. He, however, felt bound by the *Lowmon* and *Wright* v. *Union Central* decisions of the Seventh Circuit. This court later held with the district judge and against the Seventh Circuit, and so destroyed the district judge's decision in the *Davis* case and upheld his "original thought" in his *Duffy and Raymond* decision.

In passing we refer to respondents' recurrence to *Wright* v. *Logan*, 75 F. 2d 687 (C. C. A. 7). We must repeat (from pages 14 and 15 of the petitioners' brief herein) that *Wright* v. *Logan*, 75 F. 2d 687, did not decide anything con-

cerning an oral agreement for redemption. It held only that under Section 75 creditors must consent in writing to the debtors' proposal. This argument was also presented by the respondents (appellees there) in the Appellate Court of Illinois in *Wright* v. *Logan*, 288 Ill. 481, and utterly rejected. The court found that the petitioners had a right of redemption by special agreement which continued to exist long after the farmer debtor jurisdiction of the federal court was invoked. This has been discussed at pages 14 and 15 of the petititoners' brief and at pages 2 to 4 of this brief.

Bottom of Page 18 and Top of Page 19 of Respondents' Brief

We must observe, anent the paragraph at the bottom of page 18 and the top of page 19 of respondents' brief that there is no evidence whatever of any "voluntary offer to surrender title" except at R. 48, folio 73. Such an offer, even if in the form of a solemn contract embodied in a court order approved by the parties not to invoke the judicial process is void as against public policy. No one may contract away his access to the courts. In a farmer debtor case where there was such a formal court order so approved by the parties, it was held to be void. *Trego* v. *Wright*, 111 F. 2d 990 (C. C. A. 6), relying upon *Guaranty* v. *Green*, 139 U. S. 137, and *Mutual* v. *Cleveland*, 82 Fed. 508.

Bottom of Page 20 and Top of Page 21 of Respondents' Brief

Bernards v. *Johnson.*

We have discussed the decisions of *Bernards* v. *Johnson*, 103 F. 2d 567 (C. C. A. 9) at pages 17 and 18 of this

brief and the discussion there applies equally to *Bernards* v. *Johnson*, 86 L. Ed. 14, 21, decided by this court November 10, 1941.

Pages 21 to 25 of Respondents' Brief

The argument that no equity of redemption existed when the original petition was filed (pages 21 to 24 of respondents' brief) has been answered at pages 2 to 12 of this brief.

The argument that failure to file the mandate of the state appellate court wiped out the right of redemption by agreement (page 24) has been answered at pages 8 to 12 of this brief. An examination of the Illinois decisions relied upon to sustain this argument follows.

Pages 25 to 27 of the Respondents' Brief

We here discuss the four Illinois cases cited by the respondents in their brief at pages 25 to 27.

According to the reasoning of the respondents, the finding by the Appellate Court of Illinois that as a matter of fact the petitioners had a right of redemption by agreement with the mortgage holder, establishes that no such right of redemption existed because a transcript or mandate of that finding was not filed in the lower court.

The respondents say that, applying these decisions, the Circuit Court decision stands and ergo, the petitioners have no right of redemption despite the finding of the Appellate Court that they have that right. We do not believe that the cited Illinois decisions support such a conclusion.

1. *Town of Anchor* v. *Stewart*, 270 Ill. 57;
2. *Public Utilities Commission* v. *Smith*, 298 Ill. 151.

These two decisions must be discussed together.

In January 1914, the town applied for an injunction restraining an individual, Stewart, from putting a tract across East Street. The injunction was granted and on appeal was sustained. This was the case of *Town of Anchor* v. *Stewart*.

In a different proceeding before the Utilities Commission, also filed in January 1914, a railroad sought and obtained the right to lay a track across East Street. On appeal this right was sustained. It was argued that the granting by the Utilities Commission to the railroad of the right to lay a track conflicted with the injunction the town had obtained against Stewart. In considering this objection, the Supreme Court of Illinois held: (1) the issues were not the same; (2) the parties were different and (3) the subject matter was not common to the two cases. It inevitably followed that an injunction against an individual in a state court could not deprive the Public Utilities Commission of its power to grant a right of way to a railroad.

The decisoin did not hold, as contended by the respondents, that the decision of the Appellate Court in the town case was "wiped out", thus leaving the injunction of the state Circuit Court still effective. To the contrary the injunction of the state Circuit Court was disregarded.

As quoted by the respondents the Illinois Supreme Court said that the record in the town case against Stewart was an estoppel against the parties. So here the respondents

are estopped to deny the right of redemption by agreement between the mortgagors and mortgagees. If the petitioners should again sue in the state courts to establish their right of redemption by agreement with the mortgagor, the respondents would be estopped to deny the original finding in *Wright* v. *Logan*, 288 Ill. App. 481, that the right of redemption existed. In the very case cited by the respondents (*Public Utilities* v. *Smith*, 298 Ill. 151), the Supreme Court of Illinois cited *Koon* v. *Nichols*, 85 Ill. 155, which establishes this principle.

It is also readily discernible that in addition to all that has been suggested by respondents and by the petitioners here, there is a fundamental difference between an injunction issued by a court and a right of redemption created by the acts of individuals and found long afterwards by a court to have existed. An injunction is **created by the court**. A contractual right of redemption is **created by the individuals** and exists prior to the finding of a court which recognizes its existence. One is the **creation** of the court, the other is **recognized** by the court and exists apart from the recognition.

3. *Austin* v. *Dufour*, 110 Ill. 85.

It will be agreed that "if either party **desires to prosecute a case further**, . . . he must file a transcript." Having invoked the exclusive jurisdiction of the federal court under Section 75, the petitioners did not desire to prosecute their case further in the state courts. The only thing such a further prosecution could have accomplished would have been to consummate the existing right of redemption under state law. Such right of redemption was already taken over by the federal court under Section 75 and governed by the methods there prescribed.

4. *Heath* v. *Jones*, 12 Ill. App. 493.

The plaintiff sued at law and obtained a money judgment. The defendant appealed and the judgment was reversed. The time expired for filing the transcript or mandate of the appellate court. Later the plaintiff filed a bill in equity seeking a right to establish his claim. The equity court held there had been no fraud, mistake, accident or surprise, warranting relief in equity. That was the point of the equity case. Contrary to the argument of the respondents here, there was no holding that the original judgment in the lower law court was revived despite the reversal by the superior court.

Pages 28 to 30 of Respondents' Brief

The respondents assert that "The master's deed is valid". Their argument is based upon a false premise—that is upon the assertion that because an injunction issued under Section 74 was dissolved, therefore Section 75 (n) and (o) no longer applied.

The record tells a clear story.

R. 2, three entries of May 3, 1934. The petitioners filed their petition under **Section 74** and the bankruptcy court issued a restraining order shown at R. 7. This was necessary because **Section 74, for individual debtors, did not automatically stay proceedings in foreclosure.**

R. 2, entries of April 5, 1935. The petitioners applied for and were granted leave to invoke Section 75 for farmer debtors, they filed their farmer debtor petition, and it was referred to a conciliation commissioner. R. 7, f. 5. R. 8, f. 6. Section 75 automatically stays all foreclosure proceedings. Section 75 (n) and (o).

R. 17, f. 14. June 11, 1935. This order "orders that said injunction heretofore entered herein be and the same is hereby dissolved." No other injunction except that issued under Section 74 on May 3, 1934, at R. 2 was ever issued. Its dissolution in no way interfered with the automatic stay of Section 75 (n) and (o) and it did not purport to do so. As shown elsewhere at pages 10 to 11 of this brief, the bankruptcy court at all times recognized that the master's deed was ineffective.

Section 75 having been invoked on April 5, 1935 (R. 5, R. 7, f. 6), the master's deed (delivered on July 27, 1935, before the first report of the conciliation commissioner had been made on September 28, 1935, R.18, f. 16) was necessarily void because no application was ever made pursuant to Section 75 (o) to permit it. *Kalb* v. *Feuerstein*, 308 U. S. 433.

Although, as said by the respondents at page 30, "at the time the master's deed was issued there was no injunction" there was Section 75 (o) which was an automatic deprivation of power. *Kalb* v. *Feuerstein*, 308 U. S. 433.

Bernards v. *Johnson*, 86 L. Ed. 14, 21, we have discussed at pages 17 and 18 of this brief. There was no law, state or federal, to prohibit the foreclosure sale in the *Bernards* case. All proceedings under Section 75 (a) to (r) had ended and there was no proceedings pending at all under Section 75 because the new Section 75 (s) was not then enacted. The state court had full power when it held the sale in foreclosure.

Pages 31 to 32 of Respondents' Brief

We merely suggest that pages 18 and 19 of the petitioners' brief herein show from the record that the reten-

tion of the case under Section 75 (a) to (r) was pursuant to the orders of the court. At no time did the petitioners disobey any order of the court.

Pages 32 and 33 of Respondents' Brief

The petitioners have not asserted that the *Borchard* and *Wright* cases are identical as asserted at the bottom of page 32 of the respondents' brief. We say they are strikingly similar and we suppose that the erroneous decision in the district court in this *Wright* case followed the decisions of the district court and of the Circuit Court of Appeals in the *Borchard* case because they were not reversed by this court until two months later. We refer to pages 21 to 23 of petitioners' brief under the heading "The Borchard and Wright Dismissals Compared."

Pages 35 to 39 of Respondents' Brief

From the statement at page 39 of the respondents' brief that in "not a single case cited by petitioners" had the farmer debtor's period of redemption expired, we merely appeal to the decisions in those cited cases.

Pages 39 to 40 of Respondents' Brief

The statement in the middle of page 40 of the respondents' brief that "In this case before the court there is no extensive legal staff of large corporate mortgage holders. The respondents are ordinary citizens who have found themselves thus far unable to collect debt fully due them."

We would not disparage counsel. We do suggest that in this conflict between farm mortgagors and the holders of farm mortgages, the farmer, as this Court said in *Wright* v. *Union Central*, 311 U. S. 273, 279, finds himself engaged

in a race "for which customarily he would be poorly equipped". As stated by Chief Justice Hughes in *Home* v. *Blaisdell*, 290 U. S. 398, 445:

> "Also important is the fact that mortgages, as shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. **These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming.**"

It is a matter of historical record that in one case in which neither it nor any of its corporate constituent members was a party, the Association of Life Insurance Presidents contributed $60,000.00 for attorney fees and $3790.63 for expenses in contesting one suit in one federal court against an individual farmer debtor. Temporary National Economic Committee, Hearing, June 13, 1939, pages 4352 to 4353 and 4750.

The scores of erroneous adverse decisions throughout the nation are available to all mortgage holders in contesting farmer debtor proceedings.

Petitioners join respondents in asking that "the law found in the statute and the decisions be applied to the facts in this case". In this respect we note:

(1) Section 75 (q) provides that "a conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section".

(2) Section 75 (s) "Any farmer failing to obtain the acceptance" to a composition or extension proposal "or if

he feels himself aggrieved by the composition and/or extension, may amend his petition . . ."

(3) Contrary to all other debtor provisions under Chapter VIII of the Bankruptcy Act there is no authority in Section 75 for dismissing a farmer debtor case.

(4) Contrary to all other such statutes there is no provision for finding that a farmer debtor petition is filed in good faith before filing.

(5) The right of the farmer debtor to redeem may not be cut off by a request for a public sale. *Wright* v. *Union Central*, 311 U. S. 273.

(6) **The statute quite clearly was enacted to accomplish a purpose.** The ultimate goal is the opportunity of the farmer debtor to redeem after a three year stay under Section 75 (s). That purpose can not be thwarted upon the theory that the court, having retained jurisdiction for a period of time under Section 75 (a) to (r), may hold that the farmer debtor has had a "reasonable time" and has enjoyed the "equivalent" of Section 75 (s) and therefore the proceeding should then be terminated before Section 75 (s) has been invoked.

Respectfully submitted,

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December 29, 1941.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 229

IN THE MATTER OF ELIZABETH WRIGHT AND CHARLES C. WRIGHT, DEBTORS.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Petitioners,

vs.

GUSTA LOGAN, HARRIETT LOGAN SAWYER AND EXIA LOGAN REESE,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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STATEMENT OF THE CASE.

Respondents deem it advisable to make a brief additional statement in order to bring before this Court the facts involved and the issues presented by the petition.

This controversy arises under Section 75 of Bankruptcy Act (11 U. S. C. A. 203).

The Circuit Court held that a farmer debtor may not

complain where he is denied adjudication under Sub-Section S where he permitted his period of redemption under the State law to expire before filing his original petition; where he disregarded the order of the Court to file his petition under Sub-Section S and let five years pass before so doing; where he had allowed his proceeding to lie dormant for years and then, after expressly promising in open court to surrender possession of the premises involved if he did not pay up within a specified time, disregarded his promise and after expiration of the time filed a petition for extension; and where he had received all the benefits to which he could possibly have been entitled under the provisions of Section 75-S.

The debtors had a decree of foreclosure entered against them in the Circuit Court of Edgar County, Illinois, December 17, 1932 (Tr. 26; 36). The premises involved were sold under this decree on February 3, 1933, and purchased by W. S. Logan, the mortgagee for $3,801.52, leaving a deficiency of $300. A certificate of purchase was issued and delivered to the purchaser by the Master in Chancery on the day of sale (Tr. 27; 36). Under the Illinois Statute, (Illinois Revised Statutes of 1939, Chapter 77, Paragraph 18), the debtors, defendants in that foreclosure suit, were given twelve months from the date of the sale in which to redeem the real estate so sold. Debtors made no redemption.

Three months after the expiration of their period of redemption, namely, on May 3, 1934, debtors filed their petition under Section 74 of the Bankruptcy Act (Tr. 7). The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the debtors, having permitted the redemption period to expire, there was no contractual relation of debtor and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (Tr. 27).

On August 30, 1934 the District Court entered an order approving and confirming the order of the Referee (Tr. 2; 28). Debtors appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied (*Wright* v. *Logan*), 75 F. (2d) 687.

A week subsequent to the filing of the mandate, debtors filed an amended petition under Section 75 of the Bankruptcy Act asking for an extension of time and alleging that they desired to file a suit in the Circuit Court of Edgar County, Illinois for a decree allowing them to redeem from the foreclosure sale after the period of redemption (Tr. 20). Such suit was filed, dismissed for want of equity and appealed to the Appellate Court. (*Wright* v. *Logan*, 288 Ill. App. 481.) That Court held a reasonable time should be given debtors to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statute, Chapter 110, Paragraph 212 it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing Court. Debtors did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon debtors' failure to file such mandate (Tr. 29).

On May 16, 1935 the Conciliation Commissioner referred to the Court a motion filed by the mortgagee asking that the proceeding in bankruptcy be dismissed (Tr. 18). On hearing, the Court entered an order dissolving the injunction entered in said cause. Debtors prayed an appeal and the Court fixed the amount of appeal bond at $200. This appeal was never prosecuted (Tr. 17; 3).

Subsequent to the dissolution of the injunction, mortgagee secured Master's Deed which was filed for record.

The debtors informed the Conciliation Commissioner before whom the case was pending that they were not proceeding under the Frazier-Lemke Act, and therefore were not affected by its defeat as unconstitutional, whereupon, the Conciliation Commissioner filed his final report and returned to the Court all schedules and claims (Tr. 18).

On September 30, 1935 the District Judge entered an order upon the debtors giving them leave to amend their petition to include a prayer for adjudication under new Sub-Section S of 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment said debtors show cause why the original petition should not be dismissed (Tr. 19). Debtors did not file a petition to be adjudicated under Sub-Section S, but did on October 9, 1935 file a petition asking that they be given the right to avail themselves of a composition with their creditors for an extension of time (Tr. 19). The case was reinstated under Section 75 and referred to the Conciliation Commissioner of Edgar County (Tr. 22). On petition of debtors the matter was referred to the Conciliation Commissioner of Champaign County, Illinois (Tr. 24; 25; 3). On February 29, 1936 debtors filed a petition for an order restraining any person from obtaining a writ of restitution. Hearing on this petition was set for March 7, 1936, but debtors did not appear and no hearing had ever been had on that petition (Tr. 3; 29).

Nothing was done in the bankruptcy case for a period of three years from February 29, 1936 until January 4, 1939. During that period the mortgagee died leaving as his heirs the respondents.

On January 4, 1939 respondents filed a petition asking for a report of the Conciliation Commissioner on the proceeding and that thereafter they be allowed to obtain possession of the real estate or in the alternative, that the Court determine the amount due under the foreclosure decree

and fix a reasonable time for appellant to pay that amount (Tr. 26). Upon hearing March 11, 1939 the Court continued the petition for 120 days directing the debtors to redeem the property within that time for the amount agreed upon by the parties or complete rehabilitation within the terms of the act. The Court fixed the time of 120 days because that corresponded to the time it would take to effect a sale if one were necessary plus the 90 days permitted the debtors for redemption and directing if rehabilitation was not completed within the time given that full effect be given to the deed held by respondents (Tr. 236; 240).

On January 12, 1940 upon a showing that debtors had neither redeemed nor rehabilitated, the Court ordered them to surrender possession of the premises on or before March 2nd or pay into the Court $5,560 for respondents. This extended time was given on the promise of debtors made in open Court that they would voluntarily surrender possession if they were permitted to remain on the premises until March 1st (Tr. 44). Debtor did not comply with that order and promise to the Court and neither paid nor surrendered possession. However, subsequent to the expiration of the time fixed by the Court and on March 2, 1940 debtors filed with the Conciliation Commissioner a rehabilitation scheme offering to pay to respondents the sum of $1,000 but making no offer or provision for paying any more than that sum (Tr. 45; 46). On the same date, March 2, 1940 (almost five years after the Court ordered them to do so) debtors filed their petition to amend the petition pursuant to the provisions of Section 75-S (Tr. 47). Three days later the District Court entered an order dismissing this petition (Tr. 48) which order was affirmed by the Circuit Court of Appeals.

SUMMARY OF ARGUMENT.

No Grounds Exist Which Would Justify the Exercise by This Court of Its Power to Grant a Writ of Certiorari.

I.

This Case Is Not of Sufficient Gravity or General Importance to Justify This Court in Granting a Writ of Certiorari.

Under well established principles the power of this Court in granting writs of certiorari under Section 240 (a) of the Judicial Code (28 U. S. C. A. 347-A) is to be exercised only when there are special and important reasons therefor.

The petition presents no questions of gravity or importance because of the legal, economic or social problems involved.

II.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

Foreclosure sale was held on February 3, 1933. Petitioners' right of redemption expired February 3, 1934. (Ill. Rev. Statutes, Ch. 77, Paragraph 18). Petitioners filed their first petition under Section 74 of the Bankruptcy Act on May 3, 1934 three months after the expiration of their period of redemption. Under statute and decisions the rule uniformly established is that where a mortgagor has a foreclosure proceeding brought against him and

allows his period of redemption to expire before filing his petition under Section 75 of the Bankruptcy Act, the Court has no jurisdiction. (Sec. 75 N, 11 U. S. C. A. 203); *In Re Cresap*, 99 F. (2) 722, C. C. A. 7; *In Re Tracy*, 80 F. (2) 9 (C. C. A. 7); *Bernards* v. *Johnson*, 103 F. (2) 567 (C. C. A. 9), certiorari denied, 308 U. S. 595; *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3) certiorari denied 302 U. S. 686.)

III.

Decree of Trial Court Affirmed by Circuit Court of Appeals Is Not Based Solely Upon the Fact That Debtors Had Enjoyed a Moratorium of Five Years.

Petitioners' brief emphasizes that the only question presented is whether a petition may be dismissed upon the theory that the administration of the proceedings has already given the farmer debtors the equivalent of the three year moratorium. This is only one of the questions involved. It will be noted that petitioners ignore the other questions. The fact that petitioners permitted the period of redemption to expire before filing their petition in bankruptcy is conclusive.

Petitioners allowed more than five years to expire before filing their petition under Sub-Section S of Section 75 of the Bankruptcy Act.

The time consumed in the administration of this case was not due to the acts of the Court as charged by petitioners but was due to acts and unjustified delays on the part of the petitioners.

Petition under Sub-Section S of Section 75 of the Bankruptcy Act was never filed; it was merely tendered. (Tr. of R. 47.)

To determine the reason motivating the trial Court, resort must be had to all three orders mentioned in the final order of that Court, namely, the order of March 11, 1939

(Tr. of R. 36), the order of January 12, 1940 (Tr. of R. 44) and the order of March 5, 1940 (Tr. of R. 48).

IV.

The Petition Presents No Important Jurisdictional Question Arising Under the Federal Bankruptcy Act.

This is not the usual case before this Court involving some important jurisdictional questions.

(1) After sale under decree of foreclosure in the State Court petitioners permitted their period of redemption to expire before filing their original petition. (Tr. of R. 7.)

(2) After an adverse decision by the Circuit Court of Appeals for the Seventh Circuit, petitioners resorted to the State Courts of Illinois. (Tr. 20.)

(3) Having secured a decision in the Appellate Court of Illinois that a reasonable time should be given them in which to redeem, petitioners abandoned that advantage by failing to file the mandate of the Appellate Court as required by Illinois law (Ill. Rev. Statutes, Ch. 110, Paragraph 212). (Tr. 29.)

(4) Petitioners had possession of the premises for almost eight years and failed to pay the usual and customary rental. (Tr. 38.)

(5) In 1935 the District Court entered an order that petitioner amend the petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days (Tr. 19) and petitioners did not tender such amendment until 1940—a delay of five years. (Tr. of R. 47.)

(6) Petitioners at a hearing in open court voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1, 1940. (Tr. of R. 48.) This promise was ignored and disregarded by petitioners.

There is no reason why the decision of the Circuit Court of Appeals should be reviewed.

V.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Any Decision of This Court or Any Decision of a Circuit Court of Appeals.

The facts involved in this proceeding are so different from the facts in the other cases decided by this Court and the Circuit Courts of Appeal that there can be found no conflict. Under Paragraph IV of this Summary we have set out those differences.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Within a Reasonable Time After Failing to Obtain Acceptance of a Majority of Their Creditors to a Proposed Rehabilitation Plan.

The Commissioner reported on September 28, 1935 that the creditors of the petitioners and the petitioners were unable to agree. (Tr. 18.) Two days later, that is, on September 30, 1935, the Court entered an order directing the petitioners to amend their petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days, and that in the absence of such amendment show cause on or before said date why the original petition should not be dismissed. (Tr. 19.) The debtors did not tender such amended petition until March 2, 1940. (Tr. 47.)

Not having acted within a reasonable time, petitioners lost their right to proceed under Sub-Section S. *In Re Price*, 99 F. (2) 691 (C. C. A. 7); *In Re Pate*, 99 F. (2) 694 (C. C. A. 7th); *Buttars* v. *Utah Corporation*, 116 F. (2d) 622 (C. C. A. 10th).

ARGUMENT.

No Grounds Exist Which Would Justify the Exercise by This Court of Its Power to Grant a Writ of Certiorari.

I.

This Case Is Not of Sufficient Gravity or General Importance to Justify This Court in Granting a Writ of Certiorari.

It is well established that the power of this Court to grant writs of certiorari under Section 240-A of the Judicial Code (28 U. S. C. A. 347-A) rests in the discretion of the Court. This Court has many times declared that this is a power to be exercised sparingly and only in cases where there are special and important reasons therefor or in order to secure uniformity of decisions.

That this case is not of sufficient gravity or general importance to justify the exercise of power to grant a writ of certiorari is apparent from a reading of the statement of the case preceding this argument.

This case does not solely involve and was not decided only upon the principle stated in petitioners' brief. Petitioners disregard the important fact that they permitted their period of redemption to expire before filing their petition in bankruptcy and also disregarded the fact that after the Court ordered them to amend their petition to come under Sub-Section S they waited five years before so doing.

No important, legal, economic or social problem is involved. The controversy is simply one between private litigants decided upon the Statute and ordinary principles of law and the fact that petitioners were negligent and flouted the orders of the Court does not transform the

cause into one of special importance or gravity beyond the importance to the litigants themselves.

II.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

A reading of the Statute demonstrates that Congress did not intend to confer jurisdiction upon the Bankruptcy Court where debtors had permitted the right of redemption to expire. (11 U. S. C. A. 203-N.)* It will be noted that the Congress did not subject to the jurisdiction of the Court property upon which the right of redemption had expired.

The decisions under this Statute are uniform in holding the Court had no jurisdiction under such facts. *Buttars* v.

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* "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, *the right or the equity of redemption where the period of redemption has not or had not expired*, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"*In all cases where, at the time of filing the petition, the period of redemption has not or had not expired*, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

Utah Mortgage Loan Corporation, 116 F. (2) 622 (C. C. A. 10) is a case in point. All except sixteen days of the period of redemption had expired when on July 13, 1939 debtor filed his petition in the Federal Court. Debtor failed to work out a composition with his creditors within a reasonable time and the Court held that the automatic stay terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run and the period of redemption therefore expired on October 29th. The amended petition to come under Sub-Section S was filed November 27, 1939. The Court said:

> "In the interval, the remaining period of redemption had expired and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

Another case in point is *In re Cresap*, 99 F. (2) 722 (C. C. A. 7th). The debtor in this case waited three months after his period of redemption had expired before filing his petition to be adjudicated under Sub-Section S of Paragraph 75. The Court held that the debtor had nothing more than a bare legal title which was valueless so far as rehabilitation was concerned and the order striking the real estate from the debtor's schedule was affirmed.

An analogous case is *In re Tracy*, 80 F. (2) 9 (C. C. A. 7th).

A case from another jurisdiction is *Bernards* v. *Johnson*, 103 Fed. (2d) 567 (C. C. A. 9th, certiorari denied, 308 U. S. 595). In that case there was a foreclosure suit and the time within which debtor might have redeemed expired on June 29, 1936. Subsequent thereto, on July 15, 1936, debtors petitioned for an order granting them possession of the property and the trial Court dismissed this petition and an appeal was taken. The Circuit Court of Appeals held that no redemption having been made the debtors had no interest in the land after the expiration of their period of redemption and that the Bankruptcy Court had no jurisdiction for that reason.

Still another jurisdiction is in accord with this rule. *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3, certiorari denied, 302 U. S. 686). In that case foreclosure was instituted and before the sale debtor filed a petition under Section 75 of the Bankrupcy Act.. Subsequent to the time when that act was held unconstitutional the Sheriff proceeded to sell the land under the foreclosure decree. When the act was amended the debtor had his proceeding reinstated but did not file a petition at that time to be adjudicated under Sub-Section S. The Court held that under the law of Pennsylvania the debtors had no title to the property after the Sheriff's sale and had no equity of redemption and consequently, the Bankruptcy Court had no jurisdiction over the mortgaged premises.

An Illinois case passes directly upon this question. *In Re Davis*, 22 F. (2) Supp. 2, 3 (East. Dist. Ill.). The decree of foreclosure and sale were had in the State Court. The land was sold to the mortgagee on July 25, 1936. Under Illinois law mortgagee's period of redemption expired July 25, 1937. One month thereafter on August 25, 1937, mortgagee filed his petition for relief under Section 75 of the Bankruptcy Act.. Upon this state of facts the Court said:

> "Under the Statutes of Illinois, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 18, the debtor's equity of redemption expires after the end of twelve months from the time of sale. Consequently at the time the debtor's petition was filed, his right to redeem had expired. Thereafter, creditors might have redeemed within three months. Smith-Hurd Statutes, Chapter 77, Paragraph 20, but at the time of the hearing before the Commissoner, that period had likewise expired so that under the Illinois Statutes in the normal course of procedure, the mortgagee was entitled to receive its Master's Deed, there having been no redemption, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 31. These facts bring the case clearly within *In Re Lowman*, 7 Cir. 79 F. (2) 887, and *Wright* v. *Union Central Life Insurance Co.*, 7 Cir. 9 F. (2) 894. By those

decisions the law of the Circuit and the parties to the litigation, as well as the Court are bound thereby. Those decisions hold substantially that the laws governed mortgages or rules of property under the State Statutes, that where a sale has been made by a State Court in satisfaction of the mortgage, and the debtor's period of redemption has expired, the Court is without power to grant relief to the debtor."

The Circuit Court of Appeals recognizes the principle in its opinion (Tr. 68, 69).

The Illinois Statute as to redemption by the mortgagee provides for redemption within twelve months from the date of the sale (Ill. Rev. Statutes, Chapter 77, Paragraph 18).*

Petitioners seek to avoid the force of the foregoing Statute and decisions by the assertion that their period of redemption had been extended by the decision of the Appellate Court of Illinois. This assertion brings forth a revealing set of incidents. This contention was presented in the District Court and from an adverse ruling an appeal taken to the Circuit Court of Appeals. That Court in *Wright* v. *Logan*, 75 F. (2) 687 held that it did not appear from the evidence that such an oral agreement was in fact made. Not being satisfied with the decision of the Federal Courts appellants then adverted to the Illinois Courts. They filed a suit in the Circuit Court of Edgar County, Illinois, seeking to redeem the real estate from the mortgage foreclosure sale on the theory that the mortgagee had orally agreed to permit redemption at any time. A decree against them in the trial Court was reversed by the Appellate Court of Illinois which ruled that there was such

* "Any defendant, his heirs, executors, administrators, assigns or any persons interested in the premises, through or under the defendant, may, * * * within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the Sheriff or Master in Chancery who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators or assigns, the sum of money for which the premises were sold or bid off with interest thereon at the rate of 6% per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

an oral agreement and remanded the cause with directions to the trial Court to ascertain the amount due and fix a reasonable time during which mortgagee might redeem. The Illinois Statute, Chapter 110, Paragraph 212 provides:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate shall be filed in the trial Court within one year after final determination by the reviewing Court."

Petitioners have never filed the mandate of the Appellate Court. They have by such failure lost the benefit of that decision which was handed down on January 15, 1937. Not having complied with the Statute, the decree of the Circuit Court of Edgar County is still in effect that there was no extension of the period of redemption beyond the twelve months statutory time.

Petitioners endeavor to avoid the inevitable conclusion by the assertion that under a foreclosure sale title remains in the mortgagor until the delivery of a deed. In support of that assertion they cite *Lightcap* v. *Bradley*, 186 Ill. 510 (Petitioners' Brief, page 24). They are evidently not aware of the fact that that case was reversed by this Court in *Bradley* v. *Lightcap*, 195 U. S. 1, 49 L. Ed. 65 and in *Bradley* v. *Lightcap*, 195 U. S. 24, 49 L. Ed. 75.

The law of Illinois is well established that after condition broken the mortgagee is, as between himself and the mortgagor, the owner of the fee and he has a right to possession against the mortgagor, his grantee, lessee or anyone claiming under him by any right. (*Westside Trust and Savings Bank* v. *Lopoten*, 358 Ill. 631, 639; *Wolkenstein* v. *Slonim*, 355 Ill. 306, 309; *Rhorer* v. *Deatherage*, 336 Ill. 450, 454.) Not only is the mortgagee the owner of the fee after condition broken, but he may maintain ejectment against the mortgagor or the owner of the equity of redemption, with the right to possession against the mortgagor or anyone claiming under him by any right.

In the case under consideration there was a condition

of the mortgage broken. A decree of foreclosure was entered which could not have been except for condition broken. Therefore, the original mortgagee upon such condition broken was the owner of the fee with the right to possession. When the petitioners permitted the right of redemption to expire they had lost all interest in the premises, and had neither title nor right to possession. It follows that the Bankruptcy Court was without jurisdiction as to the premises involved.

Petitioners also assert that the Master's deed is void. This Master's deed was executed and delivered July 27, 1935. Petitioners' period of redemption expired May 3, 1933. This period of redemption was not continued by operation of the Statute for the reason that the Statute itself provides it does not apply where, at the time of filing the petition, the period of redemption has expired. There is in full force and effect a decision of the Circuit Court of Appeals of the 7th Circuit and a decision of the Circuit Court of Edgar County, Illinois that there was no verbal extension of the right of redemption. The injunction restraining the Master from issuing a deed was dissolved on June 11, 1935 (Tr. 17; 3).

Under the law the Master's deed is entirely valid and effective. We submit that the Bankruptcy Court had no jurisdiction of the premises involved because petitioners had permitted their period of redemption to expire before filing their petition in bankruptcy. There is no conflict in the decisions. There is no question of public policy involved.

III.

Decree of Trial Court Affirmed by Circuit Court of Appeals Is Not Based Solely Upon the Fact That Debtors Had Enjoyed a Moratorium of Five Years.

Petitioners state that the narrow question involved is whether a Bankruptcy Court may deny to a farmer debtor the right to proceed under Sub-Section S on the ground that the debtor has already had the equivalent of the moratorium provided by that section (Petitioner's Brief, page 21). We cannot concede this position. It is true this question is involved but there are other distinct questions of law which conclusively show the decision of the Court to be correct and not subject to review. The fact that petitioners permitted their period of redemption to expire before filing their petition in bankruptcy is conclusive. The fact that petitioners delayed five years after being ordered to file under Sub-Section S before doing so is another conclusive ground upon which the decision of the Circuit Court of Appeals may be rested. The time consumed in this proceeding was not due to the act of the Court as charged by petitioners but was due to the acts and unjustified delays on the part of petitioners, for example, petitioners took out time to go to the Circuit Court of Edgar County, Illinois and the Appellate Court of Illinois. Petitioners were ordered in 1935 to file their petition under Sub-Section S or show cause why their petition should not be dismissed within ten days. They did not file under Sub-Section S until 1940. Petitioners asked for and were given an extension from time to time. Any delays were due to the acts of petitioners and the only thing the Court did was to give them every benefit of the law including a moratorium of almost eight years. In determining the reasons upon which the trial Court acted we must look to his three orders, namely, the order of March 11, 1939

(Tr. 36); order of January 12, 1940 (Tr. 24); and the order of March 5, 1940 (Tr. 48). The Court set out substantial and valid reasons for the decison in addition to the reason petitioners would like to think was solely considered.

IV.

The Petition Presents No Important Jurisdictional Question Arising Under the Federal Bankruptcy Act.

This is not the usual case before this Court involving some important jurisdictional questions.

(1) After sale under decree of foreclosure in the State Court petitioners permitted their period of redemption to expire before filing their original petition (Tr. of R. 7).

(2) After an adverse decision by the Circuit Court of Appeals for the Seventh Circuit, petitioners resorted to the State Courts of Illinois (Tr. 20).

(3) Having secured a decision in the Appellate Court of Illinois that a reasonable time should be given them in which to redeem, petitioners abandoned that advantage by failing to file the mandate of the Appellate Court as required by Illinois law (Ill. Rev. Statutes, Chapter 110, paragraph 212) (Tr. 29).

(4) Petitioners had possession of the premises for almost eight years and failed to pay the usual and customary rental (Tr. 38).

(5) In 1935 the District Court entered an order that petitioners amend the petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days (Tr. 19) and petitioners did not tender such amendment until 1940—a delay of five years (Tr. 47).

(6) Petitioners at a hearing in open court voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1,

1940 (Tr. of R. 48). This promise was ignored and disregarded by petitioners.

There is no reason why the decision of the Circuit Court of Appeals should be reviewed.

V.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Any Decision of This Court or Any Decision of a Circuit Court of Appeals.

Petitioners urge on page 5 of their brief that the decision of the Circuit Court of Appeals is in conflict with various decisions of this Court and other Circuit Courts of Appeals.

There is one outstanding difference in this case from any other case relied upon by petitioners, namely, that here petitioners permitted their equity of redemption to expire and three months later filed their original petition in bankruptcy.

In *John Hancock Mutual Life Insurance Co.* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176, the facts are that there had been no foreclosure proceeding instituted at the time that the debtor filed his petition in bankruptcy. It follows that the redemption period had not begun to run.

In *Borchard* v. *California Bank*, 310 U. S. 311, 84 L. Ed. 1222, no foreclosure proceedings were ever instituted.

In *Cobb* v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370, the petition for bankruptcy was filed before the foreclosure sale and before the period of redemption could possibly have started to run.

In *Federal Land Bank* v. *Hanson*, 109 F. (2) 139 (C. C. A. 2), no foreclosure suit had been instituted and a period of redemption had not begun to run.

In *McCook* v. *Federal Land Bank*, 108 F. (2) (C. C. A. 5) no foreclosure had been instituted.

In *Ellis* v. *Connecticut Mutual Life Insurance Company*, 111 F. (2) 896 (C. C. A. 6), the sale in foreclosure had not been had when the bankruptcy proceeding was filed.

In *Trego* v. *Wright*, 111 F. (2) 990 (C. C. A. 6), the petition in bankruptcy was filed prior to the expiration of the period of redemption.

In *Schreiver* v. *Oxford*, 116 F. (2) 683 (C. C. A. 6), foreclosure proceedings were pending and before decree, debtor filed petition under Section 75.

In *Zumkehr* v. *Steinman*, 108 F. (2) 448 (C. C. A. 7), petition in bankruptcy was filed while foreclosure suit was pending and before decree was entered.

In *Peterson* v. *John Hancock*, 116 F. (2) 148 (C. C. A. 8), petition under Section 75 was filed pending foreclosure proceeding and prior to decree.

In *Cohan* v. *Elder*, 112 F. (2) 967 (C. C. A. 9), petition was filed under Section 75 prior to sale under a trust deed. The same facts are involved in *Cohan* v. *Elder*, 118 F. (2) 850 (C. C. A. 9).

In *Paradise Land & Livestock Company* v. *Federal Land Bank*, 108 F. (2) 832 (C. C. A. 10), petition was filed before any foreclosure suit was instituted.

All the other cases cited by petitioners on pages 6 and 7 of their brief are in various District Courts. In each of them the petition under Section 75 was filed prior to the time when the period of redemption began to run.

From these brief statements it will be noted that there is not a single case in which the farmer debtor permitted his period of redemption to expire before filing his petition in bankruptcy. Under paragraph II of our summary and this argument, we have presented cases which uniformly hold that when the period of redemption has expired, the Bankruptcy Court has no jurisdiction to entertain debtor's petition under Section 75 of the Bankruptcy Act.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Within a Reasonable Time After Failing to Obtain Acceptance of a Majority of Their Creditors to a Proposed Rehabilitation Plan.

On September 28, 1935 the Conciliation Commissioner reported that the petitioners and their creditors were unable to agree. (Tr. 18.) Two days later on September 30, 1935 the Court entered its order directing petitioners to amend their petition to include a prayer for adjudication under new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment they should show cause on or before said date why their original petition should not be dismissed. (Tr. 19.) Petition under Sub-Section S was never tendered by petitioners until March 2, 1940, five years after the entry of the above mentioned order. (Tr. 47.) It is held in *In Re Price*, 99 F. (2) 691 (C. C. A. 7) and in *In Re Pate*, 99 F. (2) 694 (C. C. A. 4) that debtors' petition under Sub-Section S must be filed within a reasonable period of time. To the same effect is *Buttars* v. *Utah Corp.*, 116 F. (2) 622. As the Circuit Court of Appeals said:

> "the privileges conferred upon the debtors by this remedial statute impose upon him a corresponding duty to move expeditiously in order to avail himself of its benefits. Certainly it cannot be construed to permit him to allow his proceeding to lie dormant for years and then after expressly promising to surrender possession of the premises involved if he does not pay up within a specified, invoke its benefits."

Conclusion.

The Circuit Court of Appeals properly affirmed the orders of the District Court and in so doing followed established judicial precedent.

It is respectfully submitted that the petition presents no grounds which would justify the exercise by this Court of its power to grant a writ of certiorari.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 229

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Petitioners,

vs.

GUSTA LOGAN, HARRIET LOGAN SAWYER AND EXIA LOGAN REESE,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

CERTIORARI GRANTED OCTOBER 15, 1941.

BRIEF ON BEHALF OF THE RESPONDENTS.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CRICUIT.

Certiorari granted October 15, 1941.

BRIEF ON BEHALF OF THE RESPONDENTS.

OPINIONS DELIVERED IN COURTS BELOW.

In the District Court.

The opinions of the District Court for the Eastern District of Illinois are not officially reported but are found in the Record at pages 36-40; 41; 44 and 48.

Opinion of the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported as *In Re Wright* (*Wright, et al.* v. *Logan, et al.*), 119 F. 2d. 354. This opinion is contained in the Record at pages 68 to 71.

Jurisdiction.

Petitioners invoked the jurisdiction of this Court under Sub-section 240 (a) of the Judicial Code; 28 U. S. C. 347 (a), and certiorari was granted by this Court on October 15, 1941.

Statement of the Case.

This case presents a question of law as to whether or not a Bankruptcy Court has jurisdiction under Section 75 of the Bankruptcy Act where, before filing his original petition in bankruptcy, the farmer-debtor has

(a) Permitted his equity of redemption to expire after a foreclosure suit in a State Court without making redemption (R. 36; 38, last paragraph).

(b) Flouted and disregarded the order of the District Court to file his petition under Sub-Section (S) within ten days and let five years expire before so doing (R. 19; 47).

(c) Expressly agreed in open court to pay into the Court the fixed value of the premises or surrender possession thereof within a specified time and then disregarded his agreement and, after expiration of the time fixed, filed a petition for extension (R. 48; 47).

The Facts.

Respondents deem it necessary to make an additional statement of the facts for a proper understanding of the facts involved and issues presented.

The petitioners had a decree of foreclosure entered

against them in the Circuit Court of Edgar County, Illinois, December 17, 1932 (R. 26; 36.) The premises involved, forty acres of land, were sold under this decree on February 3, 1933, and purchased by W. S. Logan, the mortgagee for $3,801.52, leaving a deficiency of $300. A certificate of purchase was issued and delivered to the purchaser by the Master in Chancery on the day of sale (R. 27; 36). Under the Illinois Statute, (Illinois Revised Statutes of 1939, Chapter 77, Paragraph 18), the petitioners, defendants in that foreclosure suit, were given twelve months from the date of the sale in which to redeem the real estate so sold. Petitioners made no redemption (R. 36).

Three months after the expiration of their period of redemption, namely, on May 3, 1934, petitioners filed their petition under Section 74 of the Bankruptcy Act (R. 2). The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the petitioners, having permitted the redemption period to expire, there was no contractual relation of petitioner and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (R. 27).

On August 30, 1934 the District Court entered an order approving and confirming the order of the Referee (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied, *Wright* v. *Logan*, 75 F. (2d) 687.

A week subsequent to the filing of the mandate, petitioners filed an amended petition under Section 75 of the Bankruptcy Act asking for an extension of time. Thereafter petitioners filed a suit in equity in the Circuit Court of Edgar County, Illinois, alleging they had a verbal agreement for an extension of the period of redemption and praying for a decree so extending such period. This bill

was dismissed for want of equity and appealed to the Appellate Court (*Wright* v. *Logan*, 288 Ill. App. 481). That Court held a reasonable time should be given petitioners to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statutes, Chapter 110, Paragraph 212, it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing court. Petitioners did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon petitioners' failure to file such mandate (R. 29). By reason of the failure to file such mandate, the decision of the Circuit Court of Edgar County to the effect that the petitioners had no extension of the period to redeem, is in full force and effect.

On May 16, 1935, the Conciliation Commissioner referred to the court a motion filed by the mortgagee asking that the proceeding in bankruptcy be dismissed (R. 18). On hearing, the court entered an order dissolving the injunction entered in said cause. Petitioners prayed an appeal and the court fixed the amount of appeal bond at $200. This appeal was never prosecuted (R. 17; 3).

Subsequent to the dissolution of the injunction, mortgagee secured Master's Deed.

The petitioners informed the Conciliation Commissioner before whom the case was pending that they were not proceeding under Frazier-Lemke Act, and therefore were not affected by its defeat as unconstitutional, whereupon, the Conciliation Commissioner filed his final report and returned to the Court all schedules and claims (R. 18).

On September 30, 1935, the District Judge entered an order upon the petitioners giving them leave to amend

their petition to include a prayer for adjudication under new Sub-Section (S) of Paragraph 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment said petitioners show cause why the original petition should not be dismissed (R. 19). Petitioners did not file a petition to be adjudicated under Sub-Section (S), but did on October 9, 1935 file a petition asking that they be given the right to avail themselves of a composition with their creditors for an extension of time (R. 19). The case was reinstated under Section 75 and referred to the Conciliation Commissioner of Edgar County (R. 22). On petition of petitioners the matter was referred to the Conciliation Commissioner of Champaign County, Illinois (R. 24, 25, 3). On February 29, 1936 petitioners filed a petition for an order restraining any person from obtaining a writ of restitution. Hearing on this petition was set for March 7, 1936, but petitioners did not appear and no hearing had ever been had on that petition (R. 3, 29).

On January 4, 1939 respondents filed a petition asking for a report of the Conciliation Commissioner on the proceeding and that thereafter they be allowed to obtain possession of the real estate or in the alternative, that the Court determine the amount due under the foreclosure decree and fix a reasonable time for appellant to pay that amount (R. 26). Upon hearing March 11, 1939 the Court continued the petition for 120 days directing the petitioners to redeem the property within that time for the amount agreed upon by the parties or complete rehabilitation within the terms of the act. The Court fixed the time of 120 days because that corresponded to the time it would take to effect a sale if one were necessary plus the 90 days permitted the petitioners for redemption and directing, if rehabilitation was not completed within the time given, that full effect be given to the deed held by respondents (R. 39).

On January 12, 1940 upon a showing that debtors had neither redeemed nor rehabilitated, the Court ordered them to surrender possession of the premises on or before March 1st or pay into the Court $5,560.72 for respondents (R. 44). This extended time was given on the promise of petitioners made in open Court that they would voluntarily surrender title and possession if they were permitted to remain on the premises until March 1st (R. 48). Petitioners did not comply with that order and promise to the Court and neither paid nor surrendered possession. However, subsequent to the expiration of the time fixed by the Court and on March 2, 1940 petitioners filed with the Conciliation Commissioner a rehabilitation scheme offering to pay to respondents the sum of $1,000 but making no offer or provision for paying any more than that sum (R. 45, 46). On the same date, March 2, 1940 (almost five years after the Court ordered them to do so) petitioners tendered their petition to amend the petition pursuant to the provisions of Section 75-S (R. 47). Three days later the District Court entered an order dismissing this petition (R. 48) which order was affirmed by the Court of Appeals.

Comments on Certain Statements in Petitioners' Statement of the Case.

In petitioners' statement of the case on page 3, paragraph 6, the implication is apparent that petitioners filed their petition under Sub-Section 75 in a proper and lawful manner. When the facts are fully considered we discover that on September 30, 1935 the District Court entered an order granting leave to petitioners to amend their petition to include a prayer for adjudication under Sub-Section (S) of 75 of the Bankruptcy Act as amended within ten days of the date of said order and that the petition mentioned in said paragraph was filed with an entire disregard of the Court's order.

In petitioners' statement of the case on page 3, paragraph 7 it is stated that the Appellate Court of Illinois decided that the petitioners had a contract extending the right of redemption. The fact is that the Appellate Court of Illinois did not fix any particular time within which redemption might be made, but referred that matter back to the Circuit Court. The language of the Appellate Court found in the case of *Wright* v. *Logan*, 288 Ill. App. 481 at page 492 is as follows:

> "The decree is therefore reversed, and the cause remanded with directions that the Court ascertain the amount due from the plaintiffs to the defendant; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the Court, and that upon payment thereof, the deed from the Master in Chancery conveying the premises described in the decree of foreclosure to the defendant be cancelled, and that the defendant Logan, be required upon such redemption to reconvey by a proper deed to Elizabeth Wright, the title acquired by him to the property through said Master's Deed and Certificate."

Petitioners never availed themselves of that decision but wholly failed to file the mandate in the Circuit Court of Edgar County at any time. Under the Illinois Statute the decree of the Circuit Court of Edgar County dismissing their bill for want of equity is still in full force and effect.

In petitioners' statement of the case, page 4, paragraph 8 the inference is that the petitioners' submittal of a proposition for compromise was filed soon after the decision in the Appellate Court of Illinois. The decision of the Appellate Court was dated January 15, 1937. The proposal of the petitioners for compromise was not filed until March 2, 1940 (R. 45).

In petitioners' statement of the case, page 4, paragraph 9, it is stated that the Conciliation Commissioner reported funds were in sight, with other available funds, sufficient to pay off the Logan mortgage. The report of the Commis-

sioner is based solely upon hearsay evidence and statements made to him by third parties and his belief (R. 43).

The statement is made in this same paragraph by petitioners that there was more than enough money to pay the Logan mortgage, but Logan refused to sign the necessary papers and they refer to Record page 21. We call to the attention of the Court that this statement appears only in the amended debtors' petition filed by the petitioners which was not verified and there is no evidence in the record to support that statement. It is stated in paragraph 10 of the statement of the petitioners on page 4 that the farmer-debtors paid rent. The Court found to the contrary. The District Court in his opinion of March 11, 1939 said:

> "The receiver of the State Court collected rent from the debtors for a time, but for the last four years no substantial amounts have been paid to the mortgagee, the Conciliation Commissioner or others by way of rent as required by the Frazier-Lemke Act." (R. 37.)

We will comment in our argument upon the validity of the Master's Deed to Logan, but here call to the attention of the Court that in petitioners' statement on page 5 in a footnote there is given what purports to be a copy of the Trial Court's order and decision of March 11, 1939. Essential parts of that order are omitted. For the convenience of the Court we attach an appendix to this brief setting forth in full the order of said Court which is found in the Record at pages 36 to 40.

Statement of petitioners on page 6, paragraph 13 would lead one to believe that the Court compelled the parties to enter into a stipulation. Such was not the case. The minutes on the docket simply show:

> "The Court directs counsel to submit to the Court any agreed statement as to the amount due at the time including deficiency judgment." (R. 4, Entry of 3-9-39.)

It will be noted that the Court did not order a stipulation or an agreement, but simply directed counsel if they could enter into an agreement as to the amount due to do so. There was no compulsion whatsoever. The stipulation filed two days later shows on its face that it was a voluntary stipulation between the parties (R. 40).

We have already indicated that the report of the Conciliation Commission (R. 41 to 43) was based upon hearsay evidence, his beliefs and conclusions. He simply thought that if Mrs. Wright could raise money she could pay off the loan. The fact is she never did raise the money.

Petitioners' statement, paragraph 16, page 7 comments upon the order of the Court upon petitioners to pay the amount of the judgment or surrender possession (R. 44). This order was entered because the petitioners on January 12, 1940 voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1, 1940 (R. 48).

The agreement of petitioners, in default of payment, to surrender possession expired March 1, 1940. They neither paid nor gave possession, but on the following day, March 2, 1940, tendered their amended petition to proceed under Sub-Section (S) (R. 47). A hearing was had on March 4, 1940 and on March 5, 1940 the petition was dismissed (R. 48). On appeal to the Circuit Court of Appeals the judgment of the District Court was affirmed (R. 68-71).

The comments we have made apply likewise to the chronological table of events in petitioner's brief on pages 7 to 11 inclusive. To point out the errors there would be a mere repetition.

SUMMARY OF ARGUMENT.

I.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtor's Petition Under Section 75 of the Bankruptcy Act.

II.

The Findings That Petitioners Had No Hope of Rehabilitation Were Not Necessary to the Decisions and Do Not Render Erroneous the Proper Disposition of the Issues Submitted.

III.

There Was No Equity of Redemption in Petitioners When They Filed Their Original Petition in Bankruptcy.

Failure to File Mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois, Amounts to an Abandonment of That Suit and a Wiping Out or Cancellation of Any Verbal Extension of the Period of Redemption.

IV.

The Master's Deed Is Valid.

V.

The Narrow Question.

The Bankruptcy Court Did Not Keep the Proceeding Under Section 75 (a) to (r).

The Borchard and Wright Cases Compared.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Under Section 75 (s) Within a Reasonable Time After the Court Has Ordered Them to Do So.

VII.

The Decisions Below Are Not Contrary to the General Tenor of Federal Decisions.

Judicial Amendments to the Farmer-Debtor Statute.

ARGUMENT.

I.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

A reading of the Statute demonstrates that Congress did not intend to confer jurisdiction upon the Bankruptcy Court where debtors had permitted the right of redemption to expire. (Bankurptcy Act ¶ 75 [n]; 11 U. S. C. A. 203-N.)* It will be noted that the Congress did not subject to the jurisdiction of the Court property upon which the right of redemption had expired.

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* "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, *the right or the equity of redemption where the period of redemption has not or had not expired*, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"*In all cases where, at the time of filing the petition, the period of redemption has not or had not expired*, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

The decisions under this Statute are uniform in holding the Court had no jurisdiction under such facts. *Buttars v. Utah Mortgage Loan Corporation*, 116 F. (2) 622 (C. C. A. 10) Certiorari Denied, 85 L. Ed. 863 is a case in point. All except sixteen days of the period of redemption had expired when on July 13, 1939 debtor filed his petition in the Federal Court. Debtor failed to work out a composition with his creditors within a reasonable time and the Court held that the automatic stay terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run and the period of redemption therefore expired on October 29th. The amended petition to come under Sub-Section (S) was filed November 27, 1939. The Court said:

> "In the interval, the remaining period of redemption had expired and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

The exact question here presented was passed upon in the case of *In re Cresap*, 99 F. (2) 722. The facts there were somewhat involved but are briefly, that while a foreclosure suit was pending, the debtor filed his petition under Section 75 of the Bankruptcy Act and secured an order restraining the Special Master from carrying out the foreclosure sale. The bankrupt proceeding was dismissed on August 19, 1935, but was reinstated on October 21, 1935, and another restraining order issued enjoining the Special Master from proceeding with the sale. The debtor made no progress in attempted rehabilitation and the Court vacated the restraining order and authorized the Special Master to proceed to execute the decree by a sale of the property, but directed that the purchaser do not assign his certificate of purchase, or take a deed from the Master until further order of the Court. The Master's sale was had on March 12, 1936. On April 25, 1936, the

petitioner's proceeding was again dismissed. Under the Illinois Statute the debtor's equity of redemption expired on March 12, 1937. The creditors of the debtor had three additional months under the Illinois Statute within which to redeem, so that the deed could not be issued until June 12, 1937. Until long after the debtor's equity of redemption had expired, he had not been adjudicated a bankrupt under the provisions of Sub-Section (S) of Section 75 of the Bankruptcy Act. The debtor on June 1, 1937, filed another petition to reinstate his proceeding, which was granted by the Court, and the debtor was adjudicated under Sub-Section (S). On June 11, 1937, nearly three months after the debtor's equity of redemption had expired and only one day before the expiration of the time for the debtor's creditors to redeem, the debtor obtained from the Conciliation Commissioner an order restraining the Master in Chancery from issuing a deed pursuant to the foreclosure decree. On July 28, 1937, the purchasers at the foreclosure sale filed a motion to strike from the debtor's schedules the real estate involved, and the Court did later, after the hearing, dissolve the restraining order entered by the Conciliation Commissioner, struck the real estate in question from the debtor's schedules, and ordered a deed to the land issued to the appellees.

As to the point involved in the present case, the Court said on page 726:

> "At the time of the last reinstatement of appellant's petition for composition and extension, which also contained a prayer for adjudication, the debtor's right to redeem had expired, for almost three months, and he had nothing more than a bare legal title which was valueless so far as his rehabilitation was concerned. He had never asked for an adjudication up to that time, yet he could have done so with effect under amended Sub-Section (S) at any time during the last preceding one year and nine months. Each previous dismissal of debtor's petition was warranted because

of his failure to secure a composition and his failure to ask for an adjudication. When his petitions were dismissed the restraining orders were severally abrogated, and when he permitted his redemption period to expire after the rightful dismissal of his petition, and before he had asked for an adjudication, all hope of rehabilitation was gone under his petition for adjudication."

Near the end of the opinion, the Court said:

"He had admittedly failed to effect a composition, and he failed to ask for the benefits of Sub-Section (S) until long after he had permitted his period of redemption to expire, and after the expiration of repeated notices of the Court to exercise his option to ask for an adjudication. Thereupon, the Court made the order complained of and for the several reasons hereinbefore discussed. We think there was no error."

It will be noted that the facts in the case at bar closely parallel the facts in the case just discussed, with the exception that in the case at bar the petitioner filed no petition whatever in bankruptcy until three months after the expiration of the period of redemption, while in the case discussed, the debtor filed his petition in bankruptcy before the Master's sale. The facts in our case place us in a stronger position than was the petitioner in the case referred to.

In the case at bar, the petitioner's period of redemption expired on February 3, 1934, and they did not file a petition for adjudication under Sub-Section (S) until March 2, 1940, almost six years later, although a rule had been entered upon them to do so within ten days after September 30, 1935. The amendment to Section 75 of the Bankruptcy Act was made on August 28, 1935, and the petitioners could have filed a petition for adjudication under Sub-Section (S) any time thereafter, but did not do so until March 2, 1940.

An analogous case in *In Re Tracy*, 80 F. (2) 9 (C. C. A. 7th).

A case from another jurisdiction is *Bernards* v. *Johnson*, 103 F. (2d) 567 (C. C. A. 9th), certiorari denied, 308 U. S. 595, affirmed 86 L. Ed. 14. In that case there was a foreclosure suit and the time within which debtor might have redeemed expired on June 29, 1936. Subsequent thereto, on July 15, 1936, debtors petitioned for an order granting them possession of the property and the trial Court dismissed this petition and an appeal was taken. The Circuit Court of Appeals held that no redemption having been made the debtors had no interest in the land after the expiration of their period of redemption and that the Bankruptcy Court had no jurisdiction for that reason.

Still another jurisdiction is in accord with this rule. *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3), certiorari denied, 302 U. S. 686. In that case foreclosure was instituted and before the sale debtor filed a petition under Section 75 of the Bankruptcy Act. Subsequent to the time when that act was held unconstitutional the Sheriff proceeded to sell the land under the foreclosure decree. When the act was amended the debtor had his proceeding reinstated but did not file a petition at that time to be adjudicated under Sub-Section (S). The Court held that under the law of Pennsylvania the debtors had no title to the property after the Sheriff's sale and had no equity of redemption and consequently, the Bankruptcy Court had no jurisdiction over the mortgaged premises.

An Illinois case passes directly upon this question. *In Re Davis*, 22 F. Supp. 2, 3 (East. Dist. Ill.). The decree of foreclosure and sale were had in the State Court. The land was sold to the mortgagee on July 25, 1936. Under Illinois law mortgagee's period of redemption expired July 25, 1937. One month thereafter on August 25, 1937, mortgagee

filed his petition for relief under Section 75 of the Bankruptcy Act. Upon this state of facts the Court said:

> "Under the Statutes of Illinois, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 18, the debtor's equity of redemption expired after the end of twelve months from the date of sale. Consequently, at the time the debtor's petition was filed, his right to redeem had expired. Thereafter, creditors might have redeemed within three months, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 20, but at the time of the hearing before the Commissioner, that period had likewise expired, so that, under the Illinois Statutes, in the normal course of procedure, the mortgagee was entitled to receive its Master's Deed, there having been no redemption, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 31. These facts bring the case clearly within *In Re Lowman*, 7 Cir. 79 F. (2) 887, and *Wright v. Union Central Life Insurance Co.*, 7 Cir. 91 F. (2) 894. By those decisions the law of this Circuit is determined, and the parties to the litigation, as well as the Court are bound thereby. Those decisions hold substantially that the laws governing mortgages are rules of property under the State Statutes, and that where a sale has been made by the State Court in satisfaction of the mortgage, and the debtor's period of redemption has expired, the Court is without power to grant relief to the debtor."

The Circuit Court of Appeals recognizes the principle in its opinion (R. 68, 69).

The Illinois Statute as to redemption by the mortgagee provides for redemption within twelve months from the date of the sale (Ill. Rev. Statutes, Chapter 77, Paragraph 18).*

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* "Any defendant, his heirs, executors, administrators, assigns or any persons interested in the premises, through or under the defendant, may, * * * within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the Sheriff or Master in Chancery, or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

Petitioners seek to avoid the force of the foregoing Statute and decisions by the assertion that their period of redemption had been extended by the decision of the Appellate Court of Illinois. This assertion brings forth a revealing set of incidents. This contention was presented before the Referee and also in the District Court and from an adverse ruling an appeal taken to the Circuit Court of Appeals. That Court in *Wright* v. *Logan*, 75 F. (2) 687 held that it did not appear from the evidence that such an oral agreement was in fact made. Not being satisfied with the decision of the Federal Courts appellants then adverted to the Illinois Courts. They filed a suit in the Circuit Court of Edgar County, Illinois, seeking to redeem the real estate from the mortgage foreclosure sale on the theory that the mortgagee had orally agreed to permit redemption at any time. A decree against them in the trial Court was reversed by the Appellate Court of Illinois which ruled that there was such an oral agreement and remanded the cause with directions to the trial Court to ascertain the amount due and fix a reasonable time during which mortgagee might redeem. The Illinois Statute, Chapter 110, Paragraph 212 provides:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate shall be filed in the trial Court within one year after final determination by the reviewing Court."

Petitioners have never filed the mandate of the Appellate Court (R. 37). They have by such failure lost the benefit of that decision which was handed down on January 15, 1937. Not having complied with the Statute, the decree of the Circuit Court of Edgar County is still in effect that there was no extension of the period of redemption beyond the twelve months statutory time.

The law of Illinois is well established that after condition broken the mortgagee is, as between himself and the mortgagor, the owner of the fee and he has a right to

possession against the mortgagor, his grantee, lessee or anyone claiming under him by any right. (*Westside Trust and Savings Bank* v. *Lopoten*, 358 Ill. 631, 639; *Wolkenstein* v. *Slonim*, 355 Ill. 306, 309; *Rhorer* v. *Deatherage*, 336 Ill. 450, 454.) Not only is the mortgagee the owner of the fee after condition broken, but he may maintain ejectment against the mortgagor or the owner of the equity of redemption, with the right to possession against the mortgagor or anyone claiming under him by any right.

In the case under consideration there was a condition of the mortgage broken. A decree of foreclosure was entered which could not have been except for condition broken. Therefore, the original mortgagee upon such condition broken was the owner of the fee with the right to possession. When the petitioners permitted the right of redemption to expire they had lost all interest in the premises, and had neither title nor right to possession. It follows that the Bankruptcy Court was without jurisdiction as to the premises involved.

Not only did the petitioners permit their equity of redemption to expire before filing their original petition in bankruptcy, but they also after getting into court flouted and disregarded the order of the District Court entered on September 30, 1935 to amend their petition to include a prayer for adjudication under Sub-Section (S) of Section 75 of the Bankruptcy Act within ten days (R. 19). Such amendment was not tendered until March 2, 1940 (R. 47). We see no reason why petitioners should be allowed to disregard the orders of a court for five years, when had they followed the order of the Court, their rights would have been preserved and protected, and then complain because of their own laches. It is a common principle that one may not take advantage of his own wrong.

Another point which mitigates against petitioners is that on January 12, 1940 in open court they voluntarily agreed to pay the amount due or surrender title to and

possession of the premises by March 1, 1940 if they were allowed to remain in possession until that time (R. 48). They violated their own promise and agreement and neither paid nor surrendered possession, but after the date agreed upon, namely, March 2, 1940, tendered their amended petition (R. 47).

The essential issue in this case is that the period of redemption of petitioners had expired when they filed their original petition in bankruptcy. Under the statute involved and the decisions of all courts thus far called upon to pass upon the question, it has been unanimously held that under those circumstances the Bankruptcy Court has no jurisdiction.

II.

The Findings That Petitioners Had No Hope of Rehabilitation Were Not Necessary to the Decisions and Do Not Render Erroneous the Proper Disposition of the Issues Submitted.

Petitioners emphasize in their brief that the lower courts decided this case on the ground that there was no reasonable hope of rehabilitation and that petitioners had already enjoyed a seven year moratorium (Petitioner's Brief, pages 20-23).

It cannot be denied that the lower courts did comment upon these facts.

Neither can it be denied that these findings were not necessary to the decision of the questions submitted to the court and do not render erroneous the proper disposition of the issues submitted.

There were two additional reasons taken into consideration by the lower courts, namely:

1. That at the time petitioners filed their original petition in bankruptcy their period of redemption under a fore-

closure sale had expired three months previously. It follows that petitioners then had no right of redemption and no right, title or interest in the premises. This fact is set forth in the opinion of the Circuit Court of Appeals (R. 68 and 69), as well as in the opinion of the District Court (R. 36-37).

2. That petitioners, on September 30, 1935, were ordered by the court to amend their petition to include a prayer for adjudication under Section 75(S) of the Bankruptcy Act within ten days (R. 49) and did not comply with that order within a reasonable time, but delayed until March 2, 1940 before tendering such a petition (R. 47). This basis for its decision is discussed in the last paragraph of the decision of the Circuit Court of Appeals (R. 71).

For the convenience of the court we attach to this brief an appendix setting out the three opinions of the District Court. It may be contended that in the last decision of March 5, 1940 the District Court said nothing about the equity of redemption having expired. We point out that in said decision the District Court incorporated by reference in that opinion its orders of March 11, 1939 and January 12, 1940 (R. 48). In the opinion of March 11, 1939 the District Court rests its decision upon the fact that the petitioners had permitted the period of redemption to expire without making such redemption (R. 36-37).

The position for which we here contend as been supported by this court in its recent decision in the case of *Bernards* v. *Johnson*, 86 L. Ed. 14, 21 (Decided November 10, 1941—Case No. 2 of the October Term 1941). A brief quotation will suffice:

> "The court also found that the bankrupts had made no attempt to comply with the new Sub-Section (S) of paragraph 75; that they had, ever since the filing of their petition for adjudication on December 19, 1934, been beyond all hope of financial rehabilitation; that there was no possibility of such rehabilitation. Such findings constitute no basis either for a refusal to

adjudicate the farmer-petitioner a bankrupt under paragraph 75 (s) or for dismissing the cause instead of following the procedure outlined in the Sub-Section. In the instant case, however, these findings, though evidently directed to the relief prayed by the respondents, were not necessary to the decision of any of the questions they submitted to the court and do not render erroneous the proper disposition of the issues submitted."

That ruling applies directly and concretely to the case at issue.

III.

There Was No Equity of Redemption in Petitioners When They Filed Their Original Petition in Bankruptcy.

The right to redeem premises from a foreclosure sale can be created only in two days: (1) by operation of law or (2) by contract.

(1) In Illinois the mortgagors have an equity of redemption by law of twelve months after sale in foreclosure (Ill. Rev. Statutes, Chapter 77, paragraph 18). Foreclosure sale in this case was on February 3, 1933 (R. 27). The twelve months period of redemption expired on February 3, 1934. The original petition in bankruptcy was filed on May 3, 1934, three months after the expiration of the statutory period of redemption (R. 2—first entry). It is evident that petitioners had no statutory right of redemption when they filed their original petition. This is directly held to be the fact in *In Re Wright*, 75 F. (2) 687, 688.

(2) Petitioners claim they had a right of redemption by contract. This position is asserted in petitioners' brief, page 16 Point II.

We deny that petitioners had any right of redemption by contract.

This right was first asserted by petitioners before the

Referee. When the original petition in bankruptcy was filed on May 3, 1934 (R. 2), the matter was referred to the Referee in Bankruptcy who denied petitioners' prayer for an extension for several reasons, among which, one reason was that the twelve month period of redemption had expired and there was no contractual relation between the debtor and creditor and the petition for extension was not filed within the time contemplated by the statute and that the petitioners had no rights or interests in the property, such rights and interests having ceased at the expiration of the twelve months period of redemption. The Referee in Bankruptcy further stated "no petition for extension could avail in favor of the mortgagor subsequent to the date of such period of redemption." We thus find the Referee overruling the contentions of petitioners that they had a verbal agreement for extension of right of redemption (R. 27). The matter was referred by the Referee on his own motion to the District Court, which Court entered an order approving and confirming the order of the Referee (R. 28) from which order the petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit (R. 2, entry of 8-30-34; R. 28).

The appeal case is found under the title *In Re Wright*, 75 F. (2) 687. The Court under point I of its opinion sets out that the petitioners contended that Logan had made an oral agreement with them for extension of the time for redemption from the mortgage sale. The Court discussed the evidence offered on that point and held that there was no agreement on the part of Logan to extend the time of redemption, affirmed the order of the District Court, and this case has not been reviewed or appealed.

Petitioners on page 14 of their brief, Point I of Argument, endeavor to avoid the holding of the Circuit Court of Appeals. A reading of that decision will indicate that petitioners' attempt is futile because that Court distinctly held that there was no oral extension of the time of redemption.

After filing of the mandate of the Circuit Court of Appeals the petitioners, on April 5, 1935 filed an amended petition asking for an extension of time to pay the debts under the Bankruptcy Act as amended (R. 8). The bankruptcy cause was reinstated. Thereafter on October 9, 1935 petitioners filed an amended debtors' petition again claiming a verbal agreement for extension of redemption period, in disregard of the decision of the Circuit Court of Appeals (R. 19). The petitioners then took a side excursion into the Illinois courts, and filed a bill in equity in Edgar County, Illinois alleging such oral agreement and praying for a decree extending the period of redemption. The Circuit Court of Edgar County held there was no verbal agreement for the extension of the time of redemption and dismissed the petitioners' bill for want of equity.

As we have heretofore indicated, on appeal the Appellate Court held that there was a verbal agreement and remanded the cause with instructions to the Circuit Court of Edgar County to allow petitioners to redeem within a reasonable time.

We have likewise heretofore pointed out petitioners lost all benefit of that ruling by failure to file the mandate of the Appellate Court in the Circuit Court of Edgar County as required by Illinois Revised Statutes, Chapter 110, paragraph 212. Thus we find the decree of the Circuit Court of Edgar County dismissing the plaintiff's bill for want of equity in full force and effect. The result is that we have a decision in the Circuit Court of Appeals and one in the Circuit Court of Edgar County, Illinois, both holding that there was no verbal agreement for an extension of the time within which petitioners might redeem.

It is provided by Section 75(n) of the Bankruptcy Act that in all cases where at the time of filing the petition the period of redemption has not expired, then the period will be extended for a period necessary to carry out the provi-

sions of the statute. The period of redemption of petitioners having expired three months before they filed their original petition, there was nothing to extend and the statute was not operative in the case at issue.

Failure to File Mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois Amounts to an Abandonment of That Suit and a Wiping Out or Cancellation of Any Verbal Extension of the Period of Redemption.

It is provided by Illinois Revised Statutes, Chapter 110, Paragraph 212 (3) as follows:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the reviewing court."

The opinion of the Appellate Court in the case of *Logan* v. *Wright*, 288 Ill. App. 481 was dated January 15, 1937. Duty rested upon petitioners to file the mandate in the Circuit Court of Edgar County on or before January 15, 1938. Such mandate has never been filed in the Edgar County Circuit Court (R. 37).

The Circuit Court of Edgar County had dismissed the bill of petitioners for want of equity thereby holding that there was no verbal extension of the period of redemption. In its opinion the Appellate Court said that this decree would be reversed and the cause remanded with directions that the Court ascertain the amounts due from the plaintiffs to the defendants; that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the Court. The Appellate Court did not fix any time and there was therefore a new hearing required by the Circuit Court to carry out the opinion of the Appellate Court.

The law of Illinois is now that the mandate must be filed within one year. Prior to January 1, 1934 the law of

Illinois was that a mandate had to be filed within two years (Section 141 of the Practice Act of 1907—Hurd's Illinois Statutes of 1919, page 2296).

In the case of *Town of Anchor* v. *Stewart,* 270 Ill. 57 the Circuit Court of McLean County, Illinois, entered a decree enjoining appellants from constructing a switch from the Illinois Central railroad across East street, in the town of Anchor and a strip of ground one hundred feet west of East street which was alleged to be a public alley, to the public warehouse of the appellant, Daniel B. Stewart, east of East Street. From that decree an appeal was taken to the Supreme Court of Illinois, which court reversed the decree and remanded the cause with directions to dissolve the injunction and dismiss the bill so far as the alleged alley was concerned, and affirmed as to East Street. The mandate from the Supreme Court of Illinois was never filed in the Circuit Court of McLean County.

The Illinois Central Railroad Company filed a petition with the Public Utilities Commission for permission to construct a side-track across the public highway known as East Street, in Anchor township, unincorporated. The highway commissioner of Anchor township, who was made a party to this proceeding, filed an answer in which, among other defenses, he set out the proceedings in the injunction suit in the Circuit Court of McLean County, and urged that decree as an estoppel. The Public Utilities Commission overruled this and the other defenses and entered an order granting the Illinois Central Railroad Company the right to construct a switch or spur-track across the highway known as East Street in the Town of Anchor, in McLean County, Illinois. An appeal was taken to the Circuit Court of Sangamon County, Illinois, where the order of the Utilities Commission was affirmed. An appeal was prosecuted to the Supreme Court of Illinois.

The case is reported as *Public Utilities Commission* v.

Smith, 298 Ill. 151. It was urged in that court that the finding of the Utilities Commission was in conflict with the decree rendered in the Circuit Court of McLean County in *Town of Anchor* v. *Stewart*, 270 Ill. 57. The court discussed other matters, and as to this contention said:

> "It would appear, also, that there is another reason why the judgment of the circuit court in the injunction case would not be binding here. While it is true that everything filed of record in the circuit court and Supreme Court in that case is binding upon the parties in that case as an estoppel, the failure to file the remanding order within two years operated as an abandonment of the suit and a wiping out or cancellation of the injunction under the provisions of section 114 of the practice act of this State. (Hurd's Stat. 1919, p. 2296.) It appears from the record and briefs in this proceeding that the transcript of the judgment in the injunction proceedings has never been filed in the circuit court of McLean County, and therefore, under the reasoning of this court in construing said statute, that judgment no longer affects or binds the actual parties thereto."

Under the authority of that decision the failure of petitioners to file the mandate or remanding order of the Appellate Court within one year, as now required by Illinois Statute, operated as an abandonment of the suit and a wiping out or cancellation of the alleged verbal extension of the period of redemption.

The same question was considered in an earlier case in Illinois entitled *Austin* v. *Dufour*, 110 Ill. 85. In that case the Court said:

> "It is very clear that by the 84th Section of the Practice Act, if either party desires to prosecute a case further, where there has been a reversal and remanding order by an Appellate tribunal, he must file a transcript of the reversal and remanding order in the trial court within two years from the date of such remanding order, and if this is not done, the cause will be abandoned."

A very early case in Illinois is *Heath* v. *Jones*, 12 Ill. App. 493. In that case the plaintiff appealed a case to the Appellate Court and secured in that Court a reversal of the judgment of the trial court. Through neglect, his attorney did not file the transcript of the judgment of reversal in the lower court until three days after the lapse of the two years provided by the statute. Plaintiff then went into equity to establish his rights and the court held that equity would not give him any relief.

Throughout petitioners' brief, the assertion is made that petitioners' right of redemption had not expired when they filed their original suit in equity on May 3, 1934 (R. 2) because of the verbal extension of that period of redemption. We also point out to the court that petitioners' amended pleading to come within Section 75(S) of the Bankruptcy Act was not tendered until March 2, 1940 (R. 47), although petitioners' equity of redemption expired on February 3, 1934.

Under the statute and decisions of the Supreme Court of Illinois the failure to file the remanding order, or mandate, operated as an abandonment of the suit and a wiping out or cancellation of any alleged verbal agreement for an extension for the period of redemption. That verbal right having been wiped out or cancelled by the failure to file the mandate of the Appellate Court, it follows that when petitioners filed their petition they had no equity of redemption or any other right, title or interest in the property, all such rights having expired three months before they filed their original petition.

IV.

The Master's Deed Is Valid.

Respondents' ancestor held the Certificate of Sale issued by the Master in Chancery of Edgar County dated February 3, 1933 (R. 27). Petitioner's right to redeem expired on February 3, 1934. Creditors had an additional three months within which to redeem. The holder of the certificate would have been entitled to a Master's Deed on May 4, 1934 (Ill. Rev. St., Ch. 77, Par. 31).

Petitioners filed their original petition in bankruptcy on May 3, 1934 (R. 2) and on the same day the District Court entered an order providing: "each and all of the creditors, their agents, attorneys, and all persons acting by, through, under or on their behalf, are hereby restrained and enjoined from taking any further steps or proceedings of any kind or character whatsoever toward enforcing any obligation against said debtors, until the further order of this court" (R. 7).

That injunction remained in full force for one year and one week, being dissolved by the District Court on June 11, 1935 (R. 17). Petitioners preserved an exception to the order of dissolution and prayed an appeal which was allowed upon filing bond for costs in the sum of Two Hundred ($200) Dollars (R. 17; 3-entry of "6-11-35"). This appeal was not prosecuted and the appeal bond was never filed.

Subsequently, on July 27, 1935, respondents' ancestor, W. S. Logan, presented his Certificate and secured a Master's Deed to the premises (R. 37).

Petitioners moved for a restraining order against mortgagee and other creditors on February 29, 1936 (R. 3) but abandoned this motion and never asked for a hearing on it (R. 37).

The deed held by respondents was retained in their possession under order of the court directing that it be not recorded or given any effect until the court should so direct (R. 39—top of page). This order was revoked and the deed given full force and effect by order of the District Court on March 5, 1940 (R. 48).

Petitioners contend that that deed is not good (Petitioners' Brief, page 23), and rest their contention on *Kalb* v. *Feuerstein*, 308 U. S. 433.

We submit that it is valid under authority of *Bernards* v. *Johnson*, 86 L. Ed. 14, 21 (Decided November 10, 1941). In that case bankruptcy proceedings were instituted on August 10, 1934. This Court held Sub-Section (S) unconstitutional on May 27, 1935. Subsequently on August 26, 1935 foreclosure sale was had in the State court and confirmed on September 16, 1935. New Sub-Section (S) was adopted by Congress on August 28, 1935. The restraining order issued against the Sheriff was dissolved on December 18, 1935 for the reason that the property had been sold by the State court when it had jurisdiction. No appeal was taken. The contentions of the parties and the holding of this Court are found in the following quotation from the opinion:

> "The petitioners urge that the automatic stay imposed by sub-section (o), and the extension of the period of redemption created by sub-section (n), continued throughout the case and that all action taken in the state court was, therefore, void under the doctrine announced in *Kalb* v. *Feuerstein*, 308 U. S. 433, 84 L. ed. 370, 60 S. Ct. 343, 41 Am. Bankr. Rep. (N. S.) 501, *supra*. The respondents insist that, in order to continue the extension and have the benefit of the stay after the conclusion of the conciliation proceedings and the adjudication in bankruptcy, timely application to the bankruptcy court to that end had to be made by the petitioners. We find it unnecessary to discuss or decide the important question thus mooted, for the reason that the orders and decrees entered by

the bankruptcy court, if valid, relieved the respondents, as mortgagees, of any disability to pursue their foreclosure suits arising out of the pendency of the bankruptcy proceeding and left them free to prosecute the foreclosures in the state courts. However erroneous the challenged orders, the remedy for their correction was by timely application for review or timely appeal."

The contentions made in that case are exactly the same as the ones made by petitioners here.

The injunction in this case was dissolved on June 11, 1935 (R. 17) and petitioners prayed an appeal, but abandoned it and did not prosecute the appeal.

At the time the Master's Deed was issued there was no injunction. The dissolution of the injunction relieved respondents, as mortgagees, of any disability to pursue their foreclosure suit in the State court. The remedy for the correction of this dissolution order was by timely appeal, which was prayed and allowed, but abandoned by petitioners. They are now in no position to complain.

V.

The Narrow Question.

Petitioners on page 20 of their brief set out what they would like the Court to believe is the narrow question. They state that the Court kept the petitioner proceeding under Section 75 (a) to (r) and then declined to let the petitioner have the advantage of Section 75 (S) of the Bankruptcy Act. We do not concede that this is the narrow question. On the contrary we vigorously affirm that it is not the question in the case. If the case be resolved into one question, it would be:

When the period of redemption in foreclosure proceedings has expired, does the Bankruptcy Court have jurisdic-

tion to entertain debtor's petition under Section 75 of the Bankruptcy Act?

We submit the answer to that question is No and have fully presented it under Point I of our Argument. We, therefore, shall not repeat what we have there said, but trust the Court will give careful consideration to that Point in our Argument.

The Bankruptcy Court Did Not Keep the Proceeding Under Section 75 (a) to (r).

Petitioners complain as we have just above indicated and also on page 18 of their brief that the Bankruptcy Court forced the petitioners to remain under Section 75 (a) to (r). The facts as we view them do not sustain this contention. Let us briefly examine the Record to ascertain the real causes of the unusual delays.

1. The decree of foreclosure was entered on December 17, 1932 (R. 26; 36). Petitioners permitted their period of redemption of one year under the Illinois Statute to expire and delayed another three months before filing their original petition in bankruptcy (R. 7). A delay on the part of petitioners of one year and three months.

2. After an adverse ruling from the Referee in Bankruptcy petitioners had the case reviewed by the District Judge, who on August 30, 1934, confirmed the Referee's report denying the petition (R. 2; 28). Petitioners appealed to the Circuit Court of Appeals, which affirmed the District Court, and mandate was filed on March 29, 1935 (R. 2). Another delay of seven months caused by petitioners.

3. Petitioners then diverted their activities into the State Courts of Illinois and filed a suit in the Circuit Court of Edgar County, Illinois, took an appeal to the Supreme Court of Illinois, which referred the cause to the Appellate

Court of Illinois for the Third District in which an opinion was rendered on January 15, 1937 (R. 28). Another delay of one year and nine months caused by petitioners resorting to the State Courts after an adverse decision in the Circuit Court of Appeals.

4. Under the Statutes of Illinois (Ill. Revised Statutes, Ch. 110, Paragraph 212) petitioners had one year in which to file mandate of the Appellate Court in the Circuit Court of Edgar County, Illinois. This petitioners failed to do (R. 37). Another delay of over one year caused by petitioners abandoning the decision of the Appellate Court of Illinois.

5. On September 30, 1935 the District Court entered an order upon petitioners granting them the right to amend their petition to include a prayer for adjudication under new Sub-Section (S) of Section 75 of the Bankruptcy Act as amended within ten days or in the absence of such amendment to show cause why the original petition should not be dismissed (R. 19). A petition to amend their petition in bankruptcy pursuant to the provisions of Section 75-S was filed by petitioners on March 2, 1940 (R. 47). This delay of four years and six months was caused solely by petitioners' failure to obey the order of the Court and was a most unreasonable and unexplained delay.

Examples might be multiplied, but sufficient has been said to demonstrate that any clogging of the normal progress of the proceedings has been due to acts and unreasonable, unexplained delays and temporizing on the part of petitioners.

The Borchard and Wright Cases Compared.

Petitioners assert that these two cases are identical (Petitioner's brief, pages 21-23). Here, again, they persist in ignoring the question involved, namely, that in the Wright case, the period of redemption had expired before

petitioners filed their original petition in bankruptcy. This is fully set forth under Point I and III of our Argument.

That was not the case in *Borchard* v. *California Bank*, 310 U. S. 311, 84 L. Ed. 1222. In that case the mortgage was given on January 30, 1934. Debtors filed their petition under Section 75 of the Bankruptcy Act on November 17, 1934. The respondent bank declared default of the mortgage in January 1935, some two months after the bankruptcy petition had been filed. It is obvious that at the time of filing the petition the debtors had title in the premises subject to the mortgage, and that the equity of redemption had not begun to run.

It is equally obvious that when the Wrights filed their petition they had no right, title or interest in the premises, but had lost all their rights by permitting their right of redemption to expire without making redemption.

In the Borchard case the statute took effect because the period of redemption had not run.

In the Wright case the statute could not take effect because the period of redemption had expired prior to the filing of the petition in bankruptcy.

On the real issue involved there is no similarity between the two cases.

VI.

Debtors Must Amend Their Petition Asking To Be Adjudged a Bankrupt Under Section 75 S Within a Reasonable Time After the Court Has Ordered Them To Do So.

The Statute providing that a farmer-debtor may be adjudged a bankrupt under Section 75(S), provides no time within which that action must be taken. When no time is indicated, it is the law that the action must be taken within a reasonable time.

As has been before indicated, the petitioners were ordered to amend the petition on September 30, 1935 within ten days thereafter (R. 19). This order was entered two days after the Conciliation Commissioner reported that petitioners and their creditors were unable to agree (R. 18). Petition under Sub-Section (s) was never tendered until March 2, 1940, five years after the entry of the above mentioned order. We submit that this was more than a reasonable time. The Court below construed the statute to provide that a reasonable time is allowed to enable the debtor to affect a composition with his creditors or failing that, to apply to the Court for adjudication in bankruptcy, saying that this remedial statute imposes upon the debtor a corresponding duty to move expeditiously in order to avail himself of its benefits. The Court cites in support of its holding *In Re Price,* 99 F. (2) 691; *In Re Pate,* 99 F. (2) 694, and *Buttars* v. *Utah Corp.,* 116 F. (2) 622. The Ninth Circuit has held to the contrary in *Cohan* v. *Elder,* 118 F. (2) 850.

This Court in *Wright* v. *Union Central Life Insurance Company,* 85 L. Ed. 166 decided December 9, 1940, applied the rule of a reasonable time to Paragraph 75 (s) (3). That section provides that after property has been re-appraised, the debtor shall have the right to redeem at the re-appraised value or at the value fixed by the Court. No time is indicated within which this redemption may be made. In that case the farmer-debtor filed a cross petition for leave so to redeem. This Court said (emphasis ours):

> "We hold that the debtor's cross petition should have been granted; that he was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have *a reasonable time,* fixed by the court, in which to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted. Only in

case the debtor failed to redeem *within a reasonable time* would the court be authorized to order a public sale."

Why should not the same rule be applied to the farmer-debtor requiring him to file his petition under Sub-Section (S) within a reasonable time after he has failed to agree on a composition with his creditors?

We submit that the situations are so similar that the same rule should be applied.

In reply to petitioners' remarks about the reasonable time theory (Plaintiff's brief, pages 27 to 30) we submit that no further reply is needed than to point out that his Court has adopted that rule by applying it to one of the sections of paragraph 75 of the Bankruptcy Act.

VII.

The Decision Below Is Not Contrary to the General Tenor of Federal Decisions.

Petitioners contend to the contrary on pages 32 to 34 of their brief. The first case cited by them as being in conflict is *John Hancock Mutual Life Insurance Company* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176. In that case the respondent Bartels presented his petition to the District Court on December 2, 1937 asking that he be afforded an opportunity to effect a composition or extension of time to pay his debts under paragraph 75. The Court referred the matter to a Conciliation Commissioner. Debtor was unable to compromise with his creditors and on January 10, 1938 filed application to be adjudged a bankrupt under Sub-Section (S). On March 23, 1938 the John Hancock Company moved to set aside the adjudication and dismiss debtors' petition on the ground that he had no hope of rehabilitation.

It will be noted that no foreclosure proceeding was ever instituted by the *John Hancock Company* v. *Bartels*. Bartels owned the property subject to the mortgage and no redemption period had expired or even begun to run. This case is not in conflict because in the Wright case under consideration petitioners had lost all right in the property by permitting their right of redemption to expire prior to filing their petition in bankruptcy.

The next case cited as being in conflict *Borchard* v. *California*, 310 U. S. 311. We have heretofore discussed and pointed out the difference between this case and the case under consideration in Point V of this brief (Page 32).

The third case cited is *Kalb* v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370. In that case foreclosure proceedings were begun on March 7, 1933 and judgment of foreclosure was entered April 21, 1933. The Sheriff sold the property under this judgment July 20, 1935. Mortgagor filed a petition under Section 75 of the Bankruptcy Act and while foreclosure was pending and on September 16, 1935 the State Court confirmed the Sheriff's sale. It will be noted that the farmer-debtor had filed his petition under Section 75 (S) before the mortgage sale had been confirmed by the Court. The period of redemption had not even started to run.

Reference may be made to the case of *Wright* v. *Union Central Life Insurance Company*, 85 L. Ed. 166. The Court in that case says that the same land is involved as in the same case reported in 304 U. S. 502. From the facts as reported there it appears that suit to foreclose a mortgage was started on January 3, 1934, judgment of foreclosure entered on June 3, 1934, sale had on July 12, 1934 and the debtor filed his petition under paragraph 75 on October 29, 1934. The one year period of redemption provided for by the Indiana Statute (Indiana Annotated Statutes Burns 1933 Edition, Paragraph 2-3909, 2-4001) made

the redemption period expire on July 12, 1935. The debtor filed his petition in bankruptcy prior to the expiration of his period of redemption.

Petitioner cites a number of other cases which we shall comment on as briefly as possible to present the facts.

In *Federal Land Bank* v. *Hansen*, 109 F. (2) 139 (C. C. A. 2nd) it appears that the debtor filed her petition under Section 75 on May 9, 1938. On January 27, 1939 Federal Land Bank moved to dismiss the proceedings which order was denied. No foreclosure decree had ever been entered and no period of redemption had expired.

In *McCook* v. *Federal Land Bank*, 108 F. (2) 185 (C. C. A. 5th) the farmer filed a petition under Section 75 and subsequently the creditors moved to dismiss the proceedings. No foreclosure suit had ever been filed and no period of redemption had expired.

In *Ellis* v. *Connecticut Mutual Life Insurance Company*, 111 F. (2) 896 (C. C. A. 6th) the facts are not stated in the opinion but the appellee confesssed error in the judgment and consented that the same should be reversed. It is undoubtedly the case that the period of redemption had not expired or else such a confession of error would not have been made.

In *Trego* v. *Wright*, 111 F. (2) 990 (C. C. A. 6th) the facts show that foreclosure proceedings were instituted and sale had on July 21, 1934. Five days prior to the sale, mortgagor filed a motion in the State Court and an order was entered thereon restraining foreclosure proceedings until February 1, 1935. On January 26, 1935 mortgagor filed his petition as a farmer-debtor in the Federal Court under the provisions of paragraph 75 of the Bankruptcy Act. On February 11, 1935 the foreclosure sale was confirmed by the State Court.

It will be observed that the farmer debtor filed his petition prior to the confirmation of the sale in the State

Court. The redemption period therefore could not have expired.

Schreiver v. *Oxford*, 116 F. (2) 684 (C. C. A. 6th), *Zumkehr* v. *Steinman*, 108 F. (2) 448 (C. C. A. 7th), and *Peterson* v. *John Hancock Mutual Life Insurance Company*, 116 F. (2) 148 (C. C. A. 8th), are all cases in which the foreclosure suit was pending when the debtors filed their petition under paragraph 75 of the Bankruptcy Act, and in none of these cases had a period of redemption ever begun to run at the time the petitions were filed. They differ from the case at bar because here the equity of redemption had expired three months before the petitioners filed their original petition in bankruptcy.

Cohan v. *Elder*, 112 F. (2) 967 (C. C. A. 9th) and the same case in 118 F. (2) 850 (C. C. A. 9th), is a case in which the petition was filed under Section 75 prior to the sale under a trust deed. The period of redemption had never started to run when the petition was filed.

In *Paradise Land Co.* v. *Federal Land Bank*, 108 F. (2) 832 (C. C. A. 10th), the debtors filed his petition under Section 75 of the Bankruptcy Act prior to the institution of any foreclosure suit.

All the remaining cases cited by petitioners on pages 33 and 34 are in various District Courts. In each of them the petition under Section 75 of the Bankruptcy Act was filed prior to the expiration of the period of redemption. In petitioners' brief on page 34 under paragraph 5 and again in the conclusion, reference is again made to the case of *Cohan* v. *Elder*, 118 F. (2) 850 (C. C. A. 9th). As we have heretofore pointed out in this case the petition in bankruptcy was filed prior to sale under a trust deed. No period of redemption had started to run.

On pages 25 and 26 of petitioners' brief other cases are cited. *In Re Price*, 99 F. (2) 691 (C. C. A. 7th), foreclosure suit was entered on September 3, 1935, and fore-

closure sale was held on October 8, 1935. Petition in bankruptcy under Section 75 was filed by the farmer-debtors on September 1, 1936 within the statutory redemption period of twelve months. It, therefore, follows that the period for the equity of redemption had not expired.

In Re Pate, 99 F. (2) 694 (C. C. A. 7th), is a case in which the petition in bankruptcy was filed three days before the date fixed for the sale of the mortgaged premises under foreclosure decree. Redemption period starts to run at the date of sale and therefore in this case the period of redemption had not started to run when the petition was filed. We are unable to locate citation *In Re Monjon*, 11 F. (2) 535. There is no such case reported at the citation given.

From these brief statements it will be observed that there is not a single case cited by petitioners in which the farmer-debtor permitted his period of redemption to expire before filing his petition in bankruptcy.

Under paragraph I of our Argument we have referred to the statute and presented cases which uniformly hold that when the period of redemption has expired, the Bankruptcy Court has no jurisdiction to entertain debtors' petition under Section 75 of the Bankruptcy Act.

Judicial Amendments to the Farmer-Debtor Statute.

Under this heading beginning on page 25 of petitioners' brief an unwarranted attack is made upon the Circuit Court of Appeals of the Seventh Circuit.

The points raised have nothing to do with the issue involved in this case excepting the remarks about the Wright case. In those comments petitioners again seize upon certain remarks of the lower courts and disregard entirely the fact that both courts base their decision on the ground that petitioners had failed to file their petition in bankruptcy prior to the expiration of their period of redem-

tion. We have heretofore fully discussed this proposition in our brief and repetition would be of no avail.

On page 30 of petitioners' brief under the heading of "'The Practical Importance of the Questions Submitted" an argument is presented based upon facts, none of which are found in the record.

Such argument does not warrant reply, but we may suggest to the court that many people who in good faith have loaned money to farmers are unable to understand why, when a farmer has lost all his right in the property by his own actions, any court would countenance approving his conduct in attempting to still retain the property.

Again on page 31 under the heading "A Last Refuge" further argument is presented not based upon any evidence in this case. In this case before the Court there is no extensive legal staff of large corporate mortgage holders. The respondents are ordinarily citizens who have found themselves thus far unable to collect a debt fully due to them.

The petitioners are the ones in this case who have had the benefit of the services of two counsel who hold themselves out as experts in the field of law involved.

Counsel for petitioners are not experts, but only general practitioners.

Every citizen knows that the Supreme Court of the United States is the last resort for legal questions arising under federal law. That Court is a refuge likewise for persons who have invested their moneys, who are willing to follow the law, but who have the right to insist upon the law being properly followed by the other parties as well as by themselves.

Respondents simply ask that the law found in the statute and the decisions be applied to the facts in this case.

Conclusion.

The decisions of the Circuit Court of Appeals and the District Court are in accord with the provisions of the applicable statute and the unanimous decisions of all courts that have passed upon the issue involved.

A court of Bankruptcy has no jurisdiction under Section 75 (a-s) of the Bankruptcy Act where the debtor's period of redemption had expired before the petition in bankruptcy was filed.

This was the cornerstone in the decisions of the Referee in Bankruptcy, the District Court and the Circuit Court of Appeals.

Diligent search has failed to reveal a single case in which jurisdiction was taken where the petition was filed subsequent to the expiration of the redemption period.

In the case under consideration the period of redemption of petitioners, under the Illinois law, expired on February 3, 1934. Their original petition in bankruptcy was filed three months after the expiration of the redemption period on May 3, 1934, at a time when petitioners had no right, title or interest in the premises.

An application of the statute and prior decisions to this state of facts can bring but one result—the affirming of the decisions below.

Respectfully submitted,

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APPENDIX.

Opinion of District Court of March 11, 1939, Record—Pages 36 to 40.

Order Upon Petition of W. S. Logan, et. al.

The debtors in this case are Elizabeth Wright and her husband. In November, 1932, W. S. Logan, the testate of petitioners, now deceased, a mortgagee, obtained a decree of foreclosure and sale upon forty acres of land belonging to Mrs. Wright for $3822.12 and costs. Pursuant to the decree, the property was sold by the master-in-chancery, on the 3rd day of February, 1933, at which time there was due the mortgagee $4101.52, to the latter for $3801.52, leaving a deficit of $300 for which judgment was entered against the debtors. Certificate of purchase duly issued.

Under the statute of Illinois, the mortgagors had twelve months and their creditors fifteen months within which to redeem. No redemption was made. On the last day before the expiration of the fifteen months period and almost three months after the debtors' right to redeem had expired, the latter filed their petition in this court under Section 74 of the Bankruptcy Act as amended, seeking an agreement for extension or composition as provided by the act. The referee, to whom the cause was referred, found that the mortgagors had no interest in this property at the time they filed their petition and that, therefore, there could be no valid proceedings for composition or extension, so far as the land involved was concerned. Upon review, this court approved his order and was affirmed by the United States Circuit Court of Appeals in *Wright* v. *Logan*, 75 Fed. (2) 685. In accord with the mandate of that court, the order of this court remains in full force and effect.

Upon expiration of the period of redemption of fifteen months, the master-in-chancery executed and delivered to Logan a deed for the real estate.

The debtors filed suit in the state court, seeking a decree allowing them to redeem despite expiration of the period of redemption. They were defeated in the trial court but the decree was reversed by the Appellate Court, which directed that the relief be granted and that the plaintiffs be permitted to redeem within a reasonable time to be fixed by the *nisi prius* court. *Wright* v. *Logan*, 288 Ill. App. 481.

Paragraph 216 of Chapter 110 of the Illinois Statutes provides that no new trial shall be had by reason of the reversal of any judgment, order or decree, unless the mandate shall be filed in the trial court within one year after final determination by the court of review. No mandate was filed in the trial court within one year of the date of the final determination of the reviewing court.

After the affirmance by the Court of Appeals and after its mandate had been filed in this court, the debtors, on April 5, 1935, filed an amended petition under Section 75 of the Bankruptcy Act as amended, asking for extension of time to pay their debts. The petition was referred to the conciliation commissioner. At that time debtors moved for a restraining order against the mortgagee and other creditors. No hearing was had upon this motion. The mortgagee having died, petitioners as devisees under his will are now the owners of all interest of the mortgagee by virtue of the premises aforesaid. No composition or extension agreement has been accepted by a majority of the creditors and filed with the conciliation commissioner, but the debtors have remained in possession of the land and enjoyed its fruit and product at all times since default was made in the payment of interest upon the mortgage prior to 1932.

The receiver of the state court collected rent from the debtors for a time but for the last four years no substantial

amounts have been paid to the mortgagee, the conciliation commissioner of others by way of rent as required by the Frazier-Lemke Act. Thus, for all practical purposes the debtors have enjoyed a moratorium of seven years and for more than three years last past without payment of any substantial rent.

Mrs. Wright owns, in addition to the forty acres, a life estate in seventy acres which is good productive land. This is unincumbered except for the judgments hereafter mentioned. At the time she filed her schedules, she owed in addition to what was due the mortgagee some $4300 represented by judgments in the Circuit Court of Paris, Illinois, and $1278 to creditors who were unsecured. She testified that she has since reduced the judgment creditors' indebtedness by approximately $1000; that one judgment creditor holding judgment for $1164.26, is in bankruptcy that she believes that she can adjust the latter for $500; that she has since paid to unsecured creditors some $545; that of the unsecured creditors $300 in the form of a rental note to the mortgagee will be satisfied by satisfaction of the mortgage indebtedness.

The debtors conduct a dairy and farm the land, raising the ordinary farm crops on all portions of both the forty acres and the seventy acres, other than that necessary for pasturage and the lots where the home property which consists of a house of about eight rooms, a barn and some small buildings, is located. They retail milk to consumers and sell some in larger lots to merchants for retail. They have a tractor which was purchased in the last two years, an old one being traded in credit on the purchase price, some cash having been paid and the balance remaining due on the conditional sales contract.

On the undisputed evidence the land is fairly worth $5000. The total indebtedness represented by the decree of foreclosure, deficiency judgment and the interest and taxes, less such credits as have been paid, is $5560.72. The debtor

at one time had arranged to borrow for refinancing purposes from the Federal Land Bank $5000 and from one of its associated affiliates, an additional sum of $1000. She had hoped to procure with this $6000 a satisfaction of the mortgage indebtedness and of the larger part of the judgment debts. She says she had an arrangement for the subordination of any judgment lien the owner of which would not accept a reduction. Apparently nothing has been done along this line for many months.

The debtors are not in very creditable position with regard to the mortgage indebtedness. They have not been diligent. They have made no redemption, although the state court has provided that they might do so. They have failed to comply with the federal act by paying the usual and customary rental. In the meantime, the mortgage indebtedness has increased. The deed held by the mortgagees has been retained in their possession under order of this court directing that it shall not be recorded or given any effect until and unless this court shall so direct. Seven years have passed since entry of the decree of foreclosure and it is obvious that the creditors have been most reasonable in permitting such a period to elapse without realization of tangible results from the mortgage owned by them. On the other hand the debtors have made some progress in the payment of other indebtedness. Apparently they are industrious and thrifty. I desire to save any equity they may have. It would seem that there is no equity in the forty acres, but when it is considered in connection with the seventy acre life estate, the debtors might possible work out a satisfaction not only of the mortgage but of their other debts so that, there then being no liens against the life estate, they would have a means of livelihood.

The petitioners have a deed to which the court may at any time give full force and effect. Consequently it is unnecessary to have another sale. But in case this court found it necessary to order a sale, there would be a period

of redemption of ninety days. Consequently it seems to be only equitable that the debtors should enjoy the same period of time they would have if the property should be sold, within which to make redemption. It would require about thirty days to make a sale and the act allows ninety days for redemption. Accordingly, it is the order of the court that the jurisdiction of this court over the deed held by petitioners and over petitioners be and the same is hereby retained; that the debtors remain in possession and custody of the property, upon condition that they at once pay a reasonable rental for the use of the land during the farming season of 1938 and arrange to pay a reasonable rental for the present season to the conciliation commissioner. Obviously any rental paid will be credited upon the total amount of the mortgage indebtedness which will thereby be proportionately reduced. This matter will be continued for a period of 120 days from this date. During that time debtors shall have every opportunity to redeem from the mortgage sale and to make any and all possible adjustment and composition with their creditors. In other words, their rehabilitation must be completed within 120 days. In the absence of their inability to complete it, the court will at the end of said period, give full force and effect to the deed held by petitioners. The conciliation commissioner will act in accord with this order.

Entered this 11th day of March, A. D. 1939.

WALTER C. LINDLEY,
Judge.

Endorsed: In Bankruptcy No. 2414-D Elizabeth Wright and Charles C. Wright, Debtors. Order Upon Petition of W. S. Logan, *et al.* Filed and Entered Mar. 11, 1939. D. H. Reed, Clerk.

OPINION OF THE DISTRICT COURT OF JANUARY 12, 1940, RECORD—PAGE 44.

In accordance with the former order entered herein in January 6, A. D. 1940, and after due notice to all parties in interest, a final hearing was had on this 12th day of January, 1940, at nine o'clock A. M.; the debtors, Elizabeth Wright and Charles C. Wright, appeared by Leo Burke, their attorneys, and Elizabeth Wright appeared in person; and the petitioners appearing by Jones, Grant and Sebat, their attorneys. The debtor, Elizabeth Wright, was sworn and examined in open Court. Also the Conciliation Commissioner, James A. Solon, in accordance with order of January 6, 1940, filed his current report to date.

After hearing the testimony, and the arguments of attorneys, and the Court being fully advised in the premises, it is ordered that the prayer of the original petition should be granted.

It is Therefore, Ordered that the possession of the premises described in said original petition, be surrendered and restored to petitioners, by Elizabeth Wright and Charles Wright, on or before March 1st, 1940, or in the alternative pay to the Clerk of this Court for distribution among petitioners in keeping with the further order of Court, the sum of $5,560.72, plus interest at 5% from March 11, 1939, to the date of payment.

Entered this 12th day of January, A. D. 1940.

WALTER C. LINDLEY,
Judge.

OPINION OF THE DISTRICT COURT OF MARCH 5, 1940,
RECORD—PAGE 48.

The court has at all times treated this proceeding as if it were under 75(S) and has granted to the debtors what is substantially an eight years moratorium, all of which appeared by the orders entered March 11, 1939 and January 12, 1940, both of which are incorporated herein by way of reference.

For the reasons previously stated; because the debtors on January 12, 1940, voluntarily offered to surrender title to and possession of the premises, if they were allowed to remain in possession until March 1, 1940; because I am without right or power to deprive the mortgagees of their rights longer, and because the debtor has enjoyed a moratorium far in excess of that provided by the Bankruptcy Act and has for years been treated as being within and given full enjoyment of all rights under 75(S), it is

Ordered by the Court that the debtors' amended petition tendered herein March 2, 1940, be and the same is hereby denied; that any and all prohibition upon the intervening petitioners from exercising their rights under deed heretofore obtained by them be and the same is hereby removed; that the deed heretofore issued by the master-in-chancery be given full force and effect and that possession of the premises described in the original petition be surrendered immediately to said intervening petitioner, to-wit, Gusta Logan, Harriet Logan Sawyer and Exia Logan Reese, by the debtors Elizabeth Wright and Charles C. Wright, as heretofore provided in the order of January 12, 1940.

It is further ordered that the debtor proceedings herein be and the same are hereby dismissed.

Entered this 5th day of March, A. D. 1940.

WALTER C. LINDLEY,
Judge.

SUPREME COURT OF THE UNITED STATES.

No. 229.—October Term, 1941.

Elizabeth Wright and Charles C. Wright, Petitioners, vs. Gusta Logan, Harriet Logan Sawyer, and Exia Logan Reese.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 2, 1942.]

Mr. Justice Black delivered the opinion of the Court.

The petitioners are Illinois farmers. Pursuant to a state court foreclosure decree, forty acres of their farm land were sold to W. S. Logan, the mortgagee. The state court master executed and delivered to Logan a certificate of sale, but a deed was not given at that time. By Illinois statute, mortgagors are given the right to redeem for twelve months after the date of foreclosure sale; and if this right is not exercised, creditors are given a similar right for an additional three months thereafter. Ill. Rev. Stat. (1941) c. 77, §§ 18, 20. On May 3, 1934, a day before the expiration of fifteen months from the sale, the petitioners filed in Federal District Court a petition for extension of time in which to pay their debts, under Section 74 of the Bankruptcy Act. 11 U. S. C. § 202. Prior to that time there had been an oral agreement which the Appellate Court of the Third District of Illinois subsequently (January 15, 1937) held to have the effect of keeping the petitioners' right of redemption alive. 288 Ill. App. 481. The forty acres were included in the petitioners' schedule of assets submitted in the Section 74 proceedings, and Logan was listed as a creditor. The District Court refused to grant the proposed extention, and the Circuit Court of Appeals affirmed. 75 F. 2d 687.

Thereafter, April 5, 1935, the petitioners filed an amendment seeking composition or extension of their indebtedness as authorized by sub-paragraphs (a) to (r) of Section 75 of the Bankruptcy Act. 11 U. S. C. § 203. Finding that the petition was filed in

good faith and was in accordance with the requirements of the Act, the judge referred the matter to a conciliation commissioner. Subsequent efforts to effect a composition or extension having failed, on March 2, 1940, the petitioners filed an amendment alleging this failure and asking that the court adjudicate them bankrupt under 75(s), which provides: "Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal . . . may amend his petition or answer asking to be adjudged a bankrupt."

Although the petitioners' allegations brought them squarely within the language of 75(s), the District Court ordered that the amended petition be denied; that the proceedings be dismissed; that the mortgagee's successors in interest[1] be permitted to exercise rights as owners under the foreclosure; that the deed issued to the mortgagee by the state master in chancery after the bankruptcy proceedings had begun be given full force and effect; and that possession of the forty acres be surrendered to the respondent. The Circuit Court of Appeals affirmed, 119 F. 2d 354, holding that 75 imposes upon farmer debtors duties corresponding to the privileges conferred; that if a farmer debtor fails to prosecute his composition proceedings to a conclusion within a reasonable time, the court can deny him the privilege of adjudication under 75(s); and that although these farmer debtors had filed under other subsections of 75, they had already enjoyed all the benefits to which they would have been entitled under 75(s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition. Because of an asserted conflict with *Cohan* v. *Elder*, 118 F. 2d 850, and because of the importance of the issue in farmer debtor cases, we granted certiorari.

Section 75(s) does not by its language condition a farmer's right to adjudication upon the diligence with which he has sought to obtain composition or extension under subsections (a) to (r). It "applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts." *John Hancock Ins. Co.*

[1] W. S. Logan, the original mortgagee, died while the proceedings were pending. The respondents here are devisees under his will.

v. *Bartels*, 308 U. S. 180, 184. That was the situation of the farmers here. And "the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279. Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes. Cf. *Borchard* v. *California Bank*, 310 U. S. 311. We think the *Bartels*, *Wright*, and *Borchard* cases control our conclusion here, and that the court below was in error in dismissing the applications for adjudication under 75(s).

In the memorandum accompanying the District Court's order directing the petitioners to surrender possession of the disputed forty acres, there is no discussion of their right to redeem. We therefore treat the order as based on the holding that the petitioners' lack of diligence deprived them of the benefits of 75(s) and that the equivalent of the benefits of 75(s) had already been conferred anyway. Because we consider such a holding erroneous, we find it unnecessary to pass upon other questions discussed by the Circuit Court of Appeals, concerning survival of the petitioners' right to redeem. It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75(n) subjects all of the farmer debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that "the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section." 11 U. S. C. (Supp. II) § 203 (amendment of August 28, 1935, 49 Stat. 942). See *Wright* v. *Union Central Ins. Co.*, 304 U. S. 502, 513-516.

The judgment is reversed and the cause remanded to the District Court for proceedings in conformity with this opinion.

Reversed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.